



These comments are submitted on behalf of the Justice Roundtable’s Law Enforcement Reform Working Group (LERWG). The Justice Roundtable is a broad-based coalition of more than 100 organizations working to reform federal criminal justice laws and policies. The Roundtable was founded in 2002 to coordinate the federal legislative and other efforts of the justice advocacy community.<sup>1</sup> LERWG is co-chaired by Kanya Bennett of the American Civil Liberties Union (ACLU) and Sakira Cook of the Leadership Conference on Civil and Human Rights (LCCHR). Organizations represented in LERWG also include Drug Policy Alliance (DPA) and Human Rights Watch (HRW).

As the U.S. Commission on Civil Rights (USCCR) was founded in 1957 to “advance[e] civil rights through objective and comprehensive investigation, research, and analysis on issues of fundamental concern to the federal government and the public,” LERWG is pleased to provide this submission as follow-up to USCCR’s November 2, 2018, hearing on “Are Rights a Reality? Evaluating Federal Civil Rights Enforcement.” The LERWG statement focuses on DOJ’s failures around civil rights enforcement with respect to policing. Building on its recent report examining “Police Use of Force: An Examination of Modern Policing Practices,”<sup>2</sup> USCCR can play a critical role in investigating these enforcement failures at a time when fatal police shootings have caused a national crisis and police relations are particularly troubled with people and communities of color, women, youth, those with disabilities, and LGBTQ people.

### **DOJ will not pursue Section 14141 pattern or practice investigations and consent decrees.**

On November 7, 2018, then Attorney General Jeff Sessions issued a policy that sets unprecedented barriers for DOJ attorneys to negotiate settlement agreements and consent decrees. Consent decrees are court orders jointly agreed on by the federal government and a state or local government actor accused of serious civil rights and civil liberties violations.<sup>3</sup> Consent decrees can remedy these violations at a systemic level, with implementation overseen by a court-appointed monitor until the agency has successfully carried out the required reforms. Sessions’ action now makes it very difficult for the federal government to hold state and local law enforcement agencies accountable for systemic unconstitutional and unlawful policing that is found after a Section 14141<sup>4</sup> pattern or practice investigation.

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<sup>1</sup> Justice Roundtable, *About*, <https://justiceroundtable.org/about/> (last visited 12/13/2018).

<sup>2</sup> U.S. Commission on Civil Rights, *Police Use of Force: An Examination of modern Policing Practices*, (Nov. 2018) <https://www.usccr.gov/pubs/2018/11-15-Police-Force.pdf>.

<sup>3</sup> Jefferson B. Sessions, Att’y Gen., Memorandum for Heads of Civil Litigating Components & United States Attorneys on the Principles and Procedures for Civil Consent Decrees and Settlement Agreements with State and Local Governmental Entities (November 7, 2018), <https://www.justice.gov/opa/press-release/file/1109621/download>.

<sup>4</sup> 42 U.S.C. § 14141.



Sessions' aversion to consent decrees – and perhaps a preview of his forthcoming memo – was reflected in DOJ's October 2018 formal opposition<sup>5</sup> to the consent decree concerning the Chicago Police Department (CPD). Even though Sessions had abandoned DOJ's earlier investigation and findings of policing failures at CPD, and the CPD consent decree was between the state of Illinois and Chicago as a result of this abandonment, Sessions still weighed in. In filing the statement of opposition, Jeff Sessions declared that “[t]here must never be another consent decree that continues the folly of the ACLU settlement,”<sup>6</sup> with Sessions referencing a 2015 settlement<sup>7</sup> between the ACLU and CPD to end the department's unconstitutional stop and frisk practices.

Sessions could not completely avoid consent decrees, having inherited a few from the previous administrations. At the close of the Obama administration, DOJ had initiated consent decrees in cities like Ferguson, Missouri and Baltimore, Maryland, responding to high profile police caused fatalities that were instigated by entrenched unconstitutional police practices, including biased policing and excessive force. But while the Ferguson, Baltimore, and other consent decrees that were finalized before Sessions' tenure continue, it is unlikely that other cities plagued by unconstitutional policing will benefit from DOJ's civil rights enforcement unless Sessions' memo is rescinded. This includes cities like Elkhart, Indiana, where 28 of the 34 supervising officers have been disciplined for reasons that “range from carelessness to incompetence to serious, even criminal, misconduct.”<sup>8</sup>

### **DOJ is failing to enforce the Death in Custody Reporting Act.**

On August 29, 2018, DOJ announced a 30-day comment period on its proposed implementation for the Death in Custody Reporting Act (DCRA), having just closed a 60-day comment period regarding DCRA implementation on August 10, 2018.<sup>9</sup> DOJ's action further delays compliance with the law, which requires all states and police departments to report all police caused fatalities and other deaths in custody. According to its proposal for implementation, DOJ plans to delay

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<sup>5</sup> United States' Statement of Interest opposing Proposed Consent Decree, *State of Illinois v. City of Chicago*, No. 06260 (N.D. Ill. Oct. 12, 2018).

<sup>6</sup> Press Release, Department of Justice, Attorney General Sessions Announces New Chicago Gun Crimes Prosecution Team, Files Brief to Stop Dangerous Consent Decree (Oct. 12, 2018), <https://www.justice.gov/opa/pr/attorney-general-sessions-announces-new-chicago-gun-crimes-prosecution-team-files-brief-stop>.

<sup>7</sup> Press Release, ACLU of Illinois, Landmark Agreement Reached on Investigatory Stops in Chicago (Aug. 7, 2015), <https://www.aclu-il.org/en/press-releases/landmark-agreement-reached-investigatory-stops-chicago>.

<sup>8</sup> Ken Armstrong & Christian Sheckler, *Nearly All the Officers in Charge of an Indiana Police Department Have Been Disciplined—Including the Chief Who Keeps Promoting Them*, ProPublica in partnership with the South Bend Tribune (Nov. 15, 2018), <https://www.propublica.org/article/nearly-all-officers-in-charge-of-elkhart-indiana-police-department-have-been-disciplined>.

<sup>9</sup> Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection: Death in Custody Reporting Act Collection, 83 Fed. Reg. 27,023, 27,024 (June 11, 2018), <https://www.gpo.gov/fdsys/pkg/FR-2018-06-11/pdf/2018-12503.pdf>.



implementation of DCRA until Fiscal Year 2020, a full five years after it was signed into law and two years after DOJ last published its near-final compliance plan and guidelines.<sup>10</sup>

DOJ's delayed implementation of DCRA is unacceptable, as there continues to be an unreliable national census of custodial and arrest-related deaths, including national statistics on mortality rates, demographic impact, circumstances of these deaths, and implicated law enforcement agencies. Simply put, the federal government does not know how many people are killed by law enforcement every year. Instead, police-caused fatalities are tracked by outlets like The Washington Post, which estimates at least 3,693 people have been killed by police since DCRA was enacted in December 2014.<sup>11</sup> Knowing the number and circumstances of police-caused fatalities is crucial to developing policies that could reduce the number of such fatalities. This data is also critical to providing the public and DOJ the information needed to ensure law enforcement agencies are complying with civil rights laws, and to assisting DOJ with fulfilling its enforcement responsibilities.

### **DOJ has perverted federal resources promoting community policing.**

On September 15, 2017, DOJ changed the purpose of the Collaborative Reform Initiative for Technical Assistance,<sup>12</sup> a Community Oriented Policing Services (COPS) program that provided federal resources to law enforcement agencies that were experiencing serious policing failures.<sup>13</sup> Collaborative reform was started in 2011 at the request of local law enforcement. It was a voluntary program for police departments and local officials to seek federal assistance to “strengthen and build the mutual trust”<sup>14</sup> between law enforcement and communities, often in the midst of tragedy, like a fatal police shooting. Collaborative reform promoted constitutional policing, addressing practices that fell short of that, including excessive force and racial profiling. Instead of promoting constitutional and community policing through collaborative reform and other technical assistance and training the COPS office provided, DOJ is asking local police departments to partner only around violent crime.<sup>15</sup>

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<sup>10</sup> Agency Information Collection Activities; Proposed eCollection eComments Requested; New Collection: Death in Custody Reporting Act Collection, 83 Fed. Reg. 44,064, 44,065 (Aug. 29, 2018), <https://www.gpo.gov/fdsys/pkg/FR-2018-06-11/pdf/2018-12503.pdf>.

<sup>11</sup> Julie Tate et al., *Data-Police-Shootings*, Washington Post, <https://github.com/washingtonpost/data-police-shootings> (last visited Dec. 16, 2018).

<sup>12</sup> Press Release, Department of Justice, Department of Justice Announces Changes to the Collaborative Reform Initiative (Sept. 15, 2017), <https://www.justice.gov/opa/pr/departments-justice-announces-changes-collaborative-reform-initiative>.

<sup>13</sup> Department of Justice, Community Oriented Policing Services, *Collaborative Reform Initiative for Technical Assistance* (June 2016), [https://cops.usdoj.gov/pdf/technical\\_assistance.pdf](https://cops.usdoj.gov/pdf/technical_assistance.pdf).

<sup>14</sup> Department of Justice, Community Oriented Policing Services, *Collaborative Reform Initiative for Technical Assistance* (June 2016), [https://cops.usdoj.gov/pdf/technical\\_assistance.pdf](https://cops.usdoj.gov/pdf/technical_assistance.pdf).

<sup>15</sup> Department of Justice, Community Oriented Policing Services, *Collaborative Reform Initiative for Technical Assistance* (June 2016), [https://cops.usdoj.gov/pdf/technical\\_assistance.pdf](https://cops.usdoj.gov/pdf/technical_assistance.pdf).



The police departments that were benefiting from collaborative reform prior to September 15, 2017, were in cities like Milwaukee, Wisconsin,<sup>16</sup> where Dontre Hamilton was fatally shot by police; Saint Anthony, Minnesota,<sup>17</sup> where Philando Castile met the same fate; and North Charleston, South Carolina,<sup>18</sup> where Walter Scott was also fatally gunned down by a police officer. It is troubling that these jurisdictions and others, in the midst of a national crisis caused by fatal police shootings and other police violence, have been abandoned by DOJ. The perversion of the collaborative reform program is consistent with then Attorney General Jeff Sessions' belief that DOJ oversight of local police departments amounted to "federal intrusion."<sup>19</sup> And it is fully inconsistent with the charge of civil rights enforcement that DOJ is charged with as it pertains to unconstitutional policing.

### **DOJ is perpetuating police militarization.**

On August 28, 2017, then Attorney General Jeff Sessions previewed<sup>20</sup> an executive order<sup>21</sup> rescinding an Obama-era executive order, E.O. 13688,<sup>22</sup> that charged a federal agency working group with implementing oversight and protocols around the weapons of war given to local law enforcement agencies. E.O. 13688 created an interagency working group that included the Departments of Defense, Justice, and Homeland Security — the primary federal providers of military weapons and equipment to law enforcement.<sup>23</sup> The working group ensured that the

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<sup>16</sup> Ashley Luthern, *U.S. Department of Justice halts ongoing review of Milwaukee Police Department*, Milwaukee Journal Sentinel (Sept. 17, 2017), <http://www.jsonline.com/story/news/crime/2017/09/17/doj-retools-collaborative-reform-halting-ongoing-review-milwaukee-police/673424001/>.

<sup>17</sup> Jon Collins, *Justice Dept. changes community policing; St. Anthony uncertain about effect*, MPR News (Sept. 15, 2017), <https://www.mprnews.org/story/2017/09/15/st-anthony-justice-department-community-policing>.

<sup>18</sup> Alan Blinder, *Justice Department to Review North Charleston Police Force*, The New York Times (May 17, 2016) <https://www.nytimes.com/2016/05/18/us/north-charleston-police-walter-scott-shooting.html?mcubz=0>.

<sup>19</sup> Jeff Sessions, *Avoid harmful federal intrusion*, USA Today (April 17, 2017) <https://www.usatoday.com/story/opinion/2017/04/17/jeff-sessions-avoid-harmful-federal-intrusion-editorials-debates/100579848/>.

<sup>20</sup> Press Release, Department of Justice, Attorney General Sessions Delivers Remarks at the 63rd Biennial Conference of the National Fraternal Order of Police (August 28, 2017), <https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-63rd-biennial-conference-national-fraternal>.

<sup>21</sup> Exec. Order No. 13809, 82 Fed. Reg. 41499 (Aug. 31, 2017) available at <https://www.whitehouse.gov/presidential-actions/presidential-executive-order-restoring-state-tribal-local-law-enforcements-access-life-saving-equipment-resources/>.

<sup>22</sup> Exec Order No. 13688, 80 Fed. Reg. 3451 (Jan. 22, 2015) available at <https://obamawhitehouse.archives.gov/the-press-office/2015/01/16/executive-order-federal-support-local-law-enforcement-equipment-acquisit>.

<sup>23</sup> Mark Landler, *Obama Offers new Standards on Police gear in Wake of Ferguson Protests*, The New York Times (Dec. 1, 2014), <https://www.nytimes.com/2014/12/02/us/politics/obama-to-toughen-standards-on-police-use-of-military-gear.html>.



agencies doling out these military-grade weapons were talking to one another, but it also established necessary policies, including the prohibition on bayonets and grenade launchers.<sup>24</sup> Without oversight and protocols of the military weapons that the federal government is transferring to local law enforcement, communities are more like to see heavily armed law enforcement dangerously escalate situations that could have remained nonviolent.<sup>25</sup> And without interagency coordination, it is now possible that the Department of Defense could provide an MRAP to a police department subjected to Department of Justice complaints of police misconduct.<sup>26</sup> Militarized policing is not “effective policing,”<sup>27</sup> as it does not deescalate, reduce bias, or improve police-community relations. But under Sessions’ tenure, DOJ allowed neighborhoods to be treated like war zones.

### **DOJ is instigating the unjust practice of civil asset forfeiture.**

On July 19, 2017, then Attorney General Jeff Sessions “develop[ed] policies to increase forfeitures.”<sup>28</sup> Sessions reversed a 2015 policy then-Attorney General Eric Holder issued<sup>29</sup> that prohibited local law enforcement from circumventing more restrictive state civil forfeiture laws by partnering with the feds. When signaling this policy reversal, Sessions proclaimed “no criminal should be allowed to keep the proceeds of their crime.”<sup>30</sup> However, one not need be a criminal to be impacted by civil asset forfeiture. People can have their homes, cars, money, and other property taken through civil asset forfeiture, a practice that requires only mere suspicion that property is connected to a crime. A criminal charge or conviction is not required.<sup>31</sup>

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<sup>24</sup> Law Enforcement Equipment Working Group, *Recommendations Pursuant to Executive Order 13688 Federal Support for Local Law Enforcement Equipment Acquisition* (May 2015), [https://www.bja.gov/publications/LEEWG\\_Report\\_Final.pdf](https://www.bja.gov/publications/LEEWG_Report_Final.pdf).

<sup>25</sup> ACLU, *War Comes Home: The Excessive Militarization of American Policing* (June 2014), <https://www.aclu.org/issues/criminal-law-reform/reforming-police-practices/war-comes-home?redirect=war-comes-home-excessive-militarization-american-policing>.

<sup>26</sup> Kanya Bennett, *Trump Just Gave Thousands of Bayonets And Hundreds of Grenade Launchers Back to Police*, ACLU Speak Freely Blog (Aug. 28, 2017), <https://www.aclu.org/blog/criminal-law-reform/reforming-police-practices/trump-just-gave-thousands-bayonets-and-hundreds>.

<sup>27</sup> Matthew Harwood, *Tomgram: Matthew Harwood, One Nation Under SWAT*, Tomdispatch.com (Aug. 14, 2014), [http://www.tomdispatch.com/post/175881/tomgram%3A\\_matthew\\_harwood\\_one\\_nation\\_under\\_swat/](http://www.tomdispatch.com/post/175881/tomgram%3A_matthew_harwood_one_nation_under_swat/).

<sup>28</sup> Press Release, Department of Justice, Attorney General Jeff Sessions Delivers Remarks to the National District Attorneys Association (July 17, 2017), <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-national-district-attorneys-association>.

<sup>29</sup> Press Release, Department of Justice, Attorney General Prohibits Federal Agency Adoptions of Assets Seized by State and Local Law Enforcement Agencies Except Where Needed to Protect Public Safety (Jan. 16, 2015), <https://www.justice.gov/opa/pr/attorney-general-prohibits-federal-agency-adoptions-assets-seized-state-and-local-law>.

<sup>30</sup> Press Release, Department of Justice, Attorney General Jeff Sessions Delivers Remarks to the National District Attorneys Association (July 17, 2017), <https://www.justice.gov/opa/speech/attorney-general-jeff-sessions-delivers-remarks-national-district-attorneys-association>.

<sup>31</sup> Kanya Bennett, *Jeff Sessions Is Aiding and Abetting Police Departments Who Want to Seize Property of People Convicted of No Crime*, ACLU The Campaign Blog (July 19, 2017), <https://www.aclu.org/blog/criminal-law-reform/reforming-police-practices/jeff-sessions-aiding-and-abetting-police>.



Civil asset forfeiture undermines property rights and is fundamentally unjust.<sup>32</sup> The practice also disproportionately impacts people of color and low-income neighborhoods.<sup>33</sup> It perpetuates over-policing, which will continue to go unchecked as long as the Department of Justice instigates forfeiture partnerships between federal and local law enforcement and fails to provide proper oversight of those relationships.<sup>34</sup> And certainly, as long as DOJ does not want to provide oversight of local police departments generally,<sup>35</sup> civil asset forfeiture will be another practice that strains police-community relations.

Thank you in advance for considering these comments. If you have any questions, please contact Kanya Bennett of the ACLU at 202-715-0808 or [kbennett@aclu.org](mailto:kbennett@aclu.org) or Sakira Cook of The Leadership Conference at (202) 263- 2894 or [cook@civilrights.org](mailto:cook@civilrights.org).

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<sup>32</sup> Kanya Bennett, *The House Tells Sessions' Justice Department It Will Not Stand for Civil Asset Forfeiture*, ACLU The Campaign blog (Sept. 13, 2017), <https://www.aclu.org/blog/criminal-law-reform/reforming-police-practices/house-tells-sessions-justice-department-it-will>.

<sup>33</sup> Press Release, ACLU, New ACLU Report Shows Philadelphia DA Seizes \$1 Million in Cash Annually From Innocent Philadelphians (June 2, 2015), <https://www.aclu.org/news/new-aclu-report-shows-philadelphia-da-seizes-1-million-cash-annually-innocent-philadelphians>.

<sup>34</sup> Press Release, Office of the Inspector General, U.S. Department of Justice, DOJ OIG Releases Report on the DOJ's Oversight of Cash Seizure and Forfeiture Activities (March 29, 2017), <https://oig.justice.gov/press/2017/2017-03-29.pdf>.

<sup>35</sup> Jeff Sessions, *Avoid harmful federal intrusion*, USA Today (April 17, 2017) <https://www.usatoday.com/story/opinion/2017/04/17/jeff-sessions-avoid-harmful-federal-intrusion-editorials-debates/100579848/>.