

August 29, 2016

The Honorable Loretta Lynch  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

The Honorable Sally Yates  
Deputy Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

The Honorable Karol Mason  
Assistant Attorney General  
U.S. Department of Justice, OJP  
810 Seventh Street, NW  
Washington, DC 20531

**Re: Proposed Implementation of Deaths In Custody Reporting Act (DICRA)**

Dear Attorney General Lynch, Deputy Attorney General Yates, and Assistant Attorney General Mason:

The 67 undersigned national, state, and local criminal justice, civil rights, human rights, faith-based, immigrants' rights, LGBTQ, and open government organizations are writing to express concerns with the proposed implementation of the Deaths In Custody Reporting Act (DICRA). We are also writing to strongly reiterate our request that the Office of Justice Programs (OJP) condition federal criminal justice grants on data collection and reporting on police-civilian encounters.

DICRA was enacted almost two years ago, so guidance on the law's data collection and reporting process is welcomed. However, we have significant concerns with the proposed process published in the Federal Register.<sup>1</sup> Some of the undersigned organizations will submit specific comments by the October 3, 2016 deadline. In the meantime, please consider and address the issues raised below.

First, the proposal is a departure from DICRA provisions that require states receiving federal funding to report deaths in custody to the federal government. The Department of Justice is attempting to shift the data collection and reporting requirements from the states to the Bureau of Justice Statistics (BJS) by having BJS collect data on deaths in custody through its Arrest-Related Deaths (ARD) program instead of states. States and law enforcement agencies, the entities closest to the data being sought, should be responsible for collecting and reporting deaths in custody to the federal government as mandated by law.<sup>2</sup> It will be difficult for DOJ to get an accurate picture of trends in custodial deaths if state and local law enforcement agencies are not held accountable for collecting data after a death occurs.

Second, with BJS assuming responsibility for states' data collection and reporting, the proposal indicates that BJS will rely primarily upon publicly available information ("open-source review") for its ARD program.<sup>3</sup> This means that should The Guardian and the Washington Post decide to continue to invest in this research,<sup>4</sup> those news outlets will continue to be the best national sources for data on deaths in police custody. Certain media outlets have been critical to understanding police-civilian encounters over the past year, but it is unlikely that national media attention

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<sup>1</sup> Federal Register, Vol. 81, No. 150, DOJ, *Agency Information Collection Activities; Proposed Collection Comments Requested; New Collection: Arrest-Related Deaths Program*, Aug. 4, 2016, available at <https://www.gpo.gov/fdsys/pkg/FR-2016-08-04/pdf/2016-18484.pdf> (hereinafter Proposed Collection Comments)

<sup>2</sup> Pub.L. 113-242.

<sup>3</sup> Proposed Collection Comments, *supra* note 1 at 51490 (stating that the BJS "redesigned methodology includes a standardized mixed method, hybrid approach relying on open sources to identify eligible cases, followed by data requests from law enforcement and medical examiner/coroner offices for incident-specific information about the decedent and circumstances surrounding the event.").

<sup>4</sup> See, e.g., The Guardian, *The Counted: People killed by police in the U.S.*, available at <http://www.theguardian.com/us-news/ng-interactive/2015/jun/01/the-counted-police-killings-us-database>.

and resources can remain on policing indefinitely. Thus, relying on media accounts and statistics is an inadequate method of collecting data to determine the circumstances under which people die while in law enforcement custody.

Moreover, the proposal does not indicate how federal law enforcement agencies will comply with DICRA. The law is clear in its application to federal law enforcement including immigration officials, so the guidance must detail how federal agencies, including Customs and Border Protection (CBP), will comply with DICRA. Also, the proposal does not provide a clear definition for the term “custody,” particularly instances where a fatal police shooting has occurred without an arrest.

Additionally, the proposal does not discuss penalties for noncompliance. DICRA gives the Attorney General the discretion to subject states that do not report deaths in custody to a ten percent reduction of Edward Byrne Memorial Justice Assistance Grant Program (Byrne JAG) funds. The financial penalty is critical to successful implementation of DICRA as voluntary reporting programs on police-community encounters have failed. Reportedly, only 224 of the more than 18,000 law enforcement agencies reported approximately 444 fatal police-shootings to the Federal Bureau of Investigation (FBI) in 2014<sup>5</sup>, though we have reason to believe that annual numbers of people killed by police exceeds 1,000.<sup>6</sup>

Finally, we would like to reiterate our ask that the Office of Justice Programs require state and local law enforcement agencies that benefit from Department of Justice federal grants and programs to collect and report data on incidents of police use of force on civilians and other police-civilian encounters, such as pedestrian and traffic stops. The federal government awards close to \$4 billion in such grants annually, and any discretionary grant should be conditioned upon providing data.<sup>7</sup>

Any statutory or formula grant, including the Edward Byrne Memorial Justice Assistance Grant (Byrne JAG), should require data reporting as part of its existing performance metrics. To achieve complete and uniform data collection and reporting, the federal government must solicit disaggregated data that is reflective of all police-civilian encounters, including those encounters with people of color, women, youth, and people with disabilities. Data concerning sexual assault and misconduct by law enforcement agents should also be collected and reported.

Thank you for your attention to this matter. We also respectfully request a meeting with you to discuss this matter further. If you have any questions or comments, please feel free to contact Kanya Bennett, Legislative Counsel with the ACLU, phone: (202) 715-0808 or email: [kbennett@aclu.org](mailto:kbennett@aclu.org) or Sakira Cook, Counsel with The Leadership Conference on Civil and Human Rights, phone: (202) 263-2894 or email: [cook@civilrights.org](mailto:cook@civilrights.org) or Monique Dixon, Deputy Policy Director and Senior Counsel with the NAACP Legal Defense and Educational Fund, Inc., phone: (202) 216-5564 or email: [mdixon@naacpldf.org](mailto:mdixon@naacpldf.org).

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<sup>5</sup> See Federal Bureau of Investigation: Uniform Crime Reporting, 2014 Crime in the United States, available at [https://ucr.fbi.gov/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/tables/expanded-homicide-data/expanded\\_homicide\\_data\\_table\\_14\\_justifiable\\_homicide\\_by\\_weapon\\_law\\_enforcement\\_2010-2014.xls](https://ucr.fbi.gov/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/tables/expanded-homicide-data/expanded_homicide_data_table_14_justifiable_homicide_by_weapon_law_enforcement_2010-2014.xls)

<sup>6</sup> See John Swaine & Oliver Laughland, *Eric Garner and Tamir Rice among those missing from FBI record of police killings*, THE GUARDIAN, Oct. 1, 2015, available at <http://www.theguardian.com/us-news/2015/oct/15/fbi-record-police-killings-tamir-rice-eric-garner>. See also 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/>.

<sup>7</sup> Brennan Center for Justice, *Success-Oriented Funding: Reforming Federal Criminal Justice Grants* (2014), available at [https://www.brennancenter.org/sites/default/files/publications/SuccessOrientedFunding\\_ReformingFederalCriminalJusticeGrants.pdf](https://www.brennancenter.org/sites/default/files/publications/SuccessOrientedFunding_ReformingFederalCriminalJusticeGrants.pdf).

Sincerely,

AFL-CIO  
African American Ministers in Action (AAMIA)  
American-Arab Anti-Discrimination Committee  
American Civil Liberties Union  
Amnesty International USA  
Asian Pacific American Labor Alliance, AFL-CIO (APALA)  
Bend the Arc: A Jewish Partnership for Justice  
Bill of Rights Defense Committee/Defending Dissent Foundation  
Californians Aware  
Call to Do Justice  
Catholics in Alliance for the Common Good  
Church of Scientology National Affairs Office  
Coalition for Humane Immigrant Rights of Los Angeles  
Council on American-Islamic Relations  
DC Reentry Task Force  
Dignity and Power Now  
Disciples Justice Action Network  
Equity Matters, Inc.  
Equality New Mexico  
Fitting the Description  
Florida Legal Services  
Friends Committee on National Legislation  
Georgia Latino Alliance for Human Rights  
Government Accountability Project  
Human Rights Defense Center  
Human Rights Watch  
Illinois Coalition for Immigrant and Refugee Rights  
Immigrant Legal Advocacy Project  
Immigrant Legal Resource Center  
Jewish Council For Public Affairs (JCPA)  
Justice Strategies  
Kino Border Initiative  
Lambda Legal  
LatinoJustice PRLDEF  
Lawyers' Committee for Civil Rights Under Law  
The Leadership Conference on Civil and Human Rights  
Metropolitan Community Churches  
NAACP  
NAACP Legal Defense and Educational Fund, Inc.  
National African American Drug Policy Coalition  
National Association of Criminal Defense Lawyers (NACDL)

National Association of Social Workers (NASW)  
National Council of Jewish Women (NCJW)  
National Disability Rights Network (NDRN)  
National Immigrant Justice Center  
National Immigration Law Center  
National Immigration Project of the National Lawyers Guild  
National LGBTQ Task Force  
No More Deaths/No Más Muertes  
OCA – Asian Pacific American Advocates  
OneAmerica  
OpenTheGovernment.org  
Pangea Legal Services  
Prison Policy Initiative  
Project South  
Reformed Church of Highland Park  
Refugee and Immigrant Center for Education and Legal Services (RAICES)  
San Diego Immigrant Rights Consortium  
Society of Professional Journalists  
South Asian Americans Leading Together (SAALT)  
Southern Border Communities Coalition  
Southern Poverty Law Center  
StoptheDrugWar.org  
Sunlight Foundation  
T’ruah: The Rabbinic Call for Human Rights  
The United Methodist Church – General Board of Church and Society  
Wilco Justice Alliance

cc: Roy Austin, Deputy Assistant, Domestic Policy Council  
Vanita Gupta, Principal Deputy Assistant Attorney General, Civil Rights Division  
Sarah Saldaña, Director, U.S. Immigration and Customs Enforcement  
R. Gil Kerlikowske, Commissioner, U.S. Customs and Border Protection  
Denise E. O’Donnell, Director, Bureau of Justice Assistance  
William J. Sabol, Director, Bureau of Justice Statistics