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June 1, 2020

Dear Speaker Pelosi, Leader McCarthy, Majority Leader McConnell, and Minority Leader Schumer:

On behalf The Leadership Conference on Civil and Human Rights (The Leadership Conference), a coalition charged by its diverse membership of more than 220 national organizations to promote and protect civil and human rights in the United States and the XXX undersigned organizations, we urge you to take swift and decisive legislative action in response to ongoing fatal police killings and other violence against Black people across our country. Federal statutory reforms are urgently needed on a range of policing issues, including use of force, police accountability, racial profiling, militarization, data collection, and training. We also respectfully request a meeting with House and Senate Leadership within the week to discuss legislative responses to ongoing police killings against Black people.

Abusive police practices coupled with devastating state-sanctioned violence have exacted systemic brutality and fatality upon Black people since our nation's founding. Today's protests across our country are not new. They are part of a long cycle of lawlessness against Black people, from our founding to 1968, the year the Reverend Dr. Martin Luther King, Jr. was murdered. This cycle includes deadly incidents spanning from Los Angeles in 1992 to Ferguson in 2014.¹ Police have shot and killed more than 1,000 people in the United States over the past year.² Moreover, Black people are disproportionately more likely than white people to be killed by police. For too long, the cycle of police brutality and racism has been met with cosmetic tinkering instead of substantive structural change. The public protests in our cities today are a response not only to unjust policing of Black people but are a cry for action to public officials for structural change, writ large.

In recent weeks, the chronic structural issue of police killings against Black people across our country has, again, escalated to a boiling point. The February 23, 2020, death of Ahmaud Arbery, who was killed by a former police officer in a Brunswick, Georgia suburb, sparked public outrage and scrutiny. More recent police killings of Breonna Taylor in Louisville, Kentucky on March 13, 2020, Dreasjon "Sean" Reed in Indianapolis, Indiana on May 6, 2020, and George Floyd in Minneapolis, Minnesota on May 25, 2020, have generated national attention and protest. This spate of cases highlights entrenched, systemic dysfunction that has long plagued police departments and our criminal legal system.³

¹ Zelizer, J. (May 30, 2020). It has been 5 Decades Since 1968, and Things are Somehow Worse, *CNN* <https://www.cnn.com/2020/05/30/opinions/2020-echoes-of-1968-zelizer/index.html>

² Database of Police Shooting since 2015. (May 29, 2020). Fatal Force, *The Washington Post*, <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>

³ The Sentencing Project. (Apr. 19, 2018). UN Report on Racial Disparities in the Criminal Justice System *Available at*, <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>

Congress must rectify these structural wrongs through legislation before another Black life is needlessly lost.

The recent case of Ahmaud Arbery brings back harrowing memories of Trayvon Martin's February 26, 2012 death. Like Mr. Martin, Mr. Arbery was young, Black, and unarmed when he was stalked and killed by vigilante actors, presumably based on the color of his skin. Mr. Arbery was fatally shot by a former police officer with impunity. It should not have taken three months and public pressure for the shooter to be arrested and charged. Pervasive lack of accountability by police departments persists in far too many agencies and destroys police legitimacy, and must be addressed by Congress.⁴

The case of Breonna Taylor's death on March 13 demonstrates the unresolved problem of militarized policing, which we also saw in Ferguson, Missouri after the death of Michael Brown in 2014. Ms. Taylor was fatally shot eight times by police in her Louisville home, after a heavy-handed, military-style raid.⁵ Police executed a no-knock warrant even though the suspect the police were looking for was already detained and did not live where Ms. Taylor was killed. This case demonstrates the need for police agencies to prohibit the use of no-knock warrants and institute mandatory de-escalation training for all officers. This case also indicates the need for Congress to end the transfer of military weapons to state and local police agencies through the Department of Defense 1033 program and other such programs.

Despite the passage of more than two months to investigate the circumstances surrounding the police killing of Ms. Taylor, none of the officers involved in her death have been arrested or charged. This situation demonstrates the need for federal prosecutors to act when state law enforcement agencies do not. This also demonstrates the need to update the federal criminal civil rights statute – Deprivation of Rights Under Color of Law, 18 U.S.C. §242, so that prosecutors can bring criminal charges against officers who violate individuals' civil rights.

George Floyd's death reopens the wounds that have barely healed after the death of Eric Garner, who was killed after being placed in an illegal chokehold by an NYPD officer in July 2014.⁶ Mr. Floyd, like Mr. Garner, was killed at the hands of a police officer as other officers sat idly and refused to intervene. In Mr. Floyd's case, a Minneapolis police officer forced a handcuffed Mr. Floyd into a prone position and pinned him to the ground by driving his knee into Mr. Floyd's neck for more than eight minutes until Mr. Floyd stopped breathing. Mr. Floyd, to no avail, repeatedly told the officer that he could not breathe.

It is past time for Congress to address the use of maneuvers that restrict the flow of oxygen or blood to the brain such as chokeholds, knee-to neck, and similar restraints. These and other such techniques make the

⁴ Muhammad, K. (July 26, 2019). Why police accountability Remains Out of Reach, *The Washington Post*, <https://www.washingtonpost.com/outlook/2019/07/26/why-police-accountability-remains-out-reach/>. This article highlights the prosecutorial decisions not to indict police because of impenetrable qualified immunity for police and acquittals based on racism. The cases of Michael Brown, Eric Garner, Terence Crutcher and Philando Castile are examples of this dynamic.

⁴ Southall, A. (Aug. 8, 2019). Officer in 'I Can't Breathe' Chokehold Was 'Untruthful,' Judge Says, *NY Times*, <https://www.nytimes.com/2019/08/18/nyregion/daniel-pantaleo-eric-garner-chokehold.html>

⁵ See, e.g., American Civil Liberties Union. (2014). *War Comes Home: The Excessive Militarization Of American Police*, at 2. <https://www.aclu.org/report/war-comes-home-excessive-militarization-american-police>: "[T]he use of hyper-aggressive tools and tactics results in tragedy for civilians and police officers, escalates the risk of needless violence, destroys property, and undermines individual liberties."

death or injuries resulting therefrom a violation of 18 U.S.C. §242. Accordingly, we urge members of Congress to pass legislation that would prohibit the use of such maneuvers.

Additionally, too often, police killings involve officers with a history of misconduct complaints. For example, last week, the officer who killed Mr. Floyd allegedly had 18 misconduct complaints lodged against him with two resulting in discipline.⁷ The officer who shot and killed 12-year-old Tamir Rice in Cleveland, Ohio reportedly was deemed emotionally unstable and unfit for duty in a previous job:⁸ he was ultimately fired from the Cleveland Police Department for lying on his job application.⁹ The same officer applied for and was hired to serve in another police department in the state; he resigned for that job days later.

Police executives need information about the misconduct histories of officers before hiring them, which underscores the need for a national public registry of law enforcement officers that compiles the names of officers who have been terminated or decertified for misconduct, or who have complaints lodged against them. This registry would permit law enforcement executives' access to necessary data to inform hiring decisions and for the public to know the employment histories of the officers who work in their communities.

These recent police killings of residents across the country are part of a longer history of fatal police killings against Black people in America and demand Congressional action immediately. Sadly, there is no reliable national accounting of victims of police use of force, a reality that former Federal Bureau of Investigation (FBI) Director James Comey acknowledged in 2015. Congress must ensure the compliance with the Death in Custody Reporting Act,¹⁰ which it enacted six years ago, as well as ensure more robust data collection on police-community encounters, including use of force, as it prohibits racial profiling.

We call on Congress to adopt the following legislative measures to ensure that police officers live up to their oath to protect and serve:

1. Require a federal standard that use of force be reserved for only when *necessary* as a last resort after exhausting reasonable options, and incentivize states to implement this standard; require the use of de-escalation techniques, and the duty to intervene; ban the use of force as a punitive measure or means of retaliation against individuals who only verbally confront officers, or against individuals who pose a danger only to themselves; and require all officers to accurately report all uses of force;
2. Prohibit all maneuvers that restrict the flow of blood or oxygen to the brain, including neck holds, chokeholds, and similar excessive force, deeming the use of such force a federal civil rights violation;

⁷ Adone, D., Silberman, H., Alonso, M. (May 29, 2020). The Minneapolis police officer who knelt on George Floyd's neck had 18 previous complaints against him, police department says, *CNN*, <https://www.cnn.com/2020/05/28/us/minneapolis-officer-complaints-george-floyd/index.html>

⁸ (Dec. 4, 2014). Officer Who Killed Tamir Rice Found Unfit in Previous Job, *NBC*, <https://www.nbcnews.com/news/us-news/officer-who-killed-tamir-rice-found-unfit-previous-police-job-n261111>

⁹ Burke, M. (Oct. 11, 2018). Officer who fatally shot Tamir Rice Quits Ohio Police Department Days After He was Hired, *NBC*, <https://www.nbcnews.com/news/us-news/officer-who-fatally-shot-tamir-rice-quits-ohio-police-department-n919046>

¹⁰ Public Law 113 - 242 - *Death in Custody Reporting Act of 2013*

3. Prohibit racial profiling, and require robust data collection on police-community encounters and law enforcement activities. Data should capture all demographic categories and be disaggregated;
4. Eliminate federal programs that provide military equipment to law enforcement;
5. Prohibit the use of no-knock warrants, especially for drug searches;
6. Change the 18 U.S.C. Sec. 242 mens rea requirement from willfulness to recklessness, permitting prosecutors to successfully hold law enforcement accountable for the deprivation of civil rights and civil liberties;
7. Develop a national public database that would cover all police agencies in the United States and its territories, similar to the International Association of Directors of Law Enforcement Standards and Training's National Decertification Index,¹¹ which would compile the names of officers who have had their licenses revoked due to misconduct, including but not limited to domestic violence, sexual violence, assault and harassment, criminal offense against minors, excessive use of force, violation of 18 U.S.C. § 242; perjury, falsifying a police report or planting and destroying evidence, and deadly physical assault; as well as terminations and complaints against the officers; and
8. End the qualified immunity doctrine that prevents police from being held legally accountable when they break the law. To overcome the defense of qualified immunity, require that a victim must show that law enforcement violated "clearly established" law by pointing to a case arising in the same context and involving the same conduct.

Now is the time for Congress to pass meaningful police reform legislation. While we appreciate hearings and resolutions, we need comprehensive measures enacted. We need Congress to truly step up to the plate and protect Black communities from the systemic perils of over policing, police brutality, misconduct, and harassment, and end the impunity in which officers operate in taking the lives of Black people. It is your moral and ethical duty to ensure Black people and communities are free from the harm and threats from law enforcement and to curtail state sanctioned police violence and militarized police responses. We welcome the opportunity for Members of Congress and the principals of our organizations to meet and confirm next steps to advance federal legislation that will save the lives of countless Black people.

Thank you for your consideration. To follow-up on this request or raise any questions, please contact Sakira Cook of The Leadership Conference at cook@civilrights.org; Kanya Bennett of the ACLU at kbennett@aclu.org; Monique Dixon of NAACP LDF at mdixon@naacpldf.org; or Christopher Scott of The Open Society Policy Center at Christopher.Scott@opensocietyfoundations.org.

Sincerely,

The Leadership Conference on Civil and Human Rights

¹¹ See e.g., The President's 21st Century Task Force report at 2.15, at https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.