



Senate Judiciary Committee  
224 Dirksen Senate Office Building  
Washington, DC 20510

June 23, 2020

**SPLC Action Fund Statement for the Record for June 16 Hearing on “Police Use of Force and Community Relations”**

Dear Chairman Graham, Ranking Member Feinstein, and Members of the Senate Judiciary Committee:

The SPLC Action Fund respectfully submits this statement for the record for the June 16 Hearing in the Senate Judiciary Committee on “Police Use of Force and Community Relations.”

The SPLC Action Fund is dedicated to fighting for racial justice alongside impacted communities in pursuit of equity and opportunity for all. We work primarily in the Southeast United States where we have offices in Alabama, Georgia, Florida, Louisiana, Mississippi, and Washington, D.C. The SPLC Action Fund seeks to promote policies and laws that will disrupt mass incarceration and eliminate the structural racism and inequalities that fuel over-policing, prosecution, imprisonment, and oppression of people of color, immigrants, young people, women, low-income people, and the LGBTQ+ community.

Galvanized by the death of George Floyd at the hands of Derek Chauvin, a police officer who knelt on Mr. Floyd’s neck for eight minutes and forty-six seconds while other officers looked on, people across the country are demanding transformative change. This past month, we have witnessed the culmination of a decades-long movement calling not for reform but for a fundamental transformation of policing in the United States. Mr. Floyd’s cries of, “I can’t breathe” echoed the cries of Eric Garner, as he too slowly suffocated while a police officer held him in a chokehold. These killings are not merely the result of individual police officers acting outside the law. Instead, they are the product of a policing and criminal legal system that treats Black and brown people as automatically suspect, that glorifies military style responses, that lacks accountability, and that was built to uphold white supremacy.

And nowhere is the legacy of entrenched, systemic racism more acute than in the Southern states where we live and work. Our communities are demanding an end to this legacy of violence. Congress must heed the call to ensure safety, equality, and justice for all.

The SPLC Action Fund joined the Leadership Conference on Civil and Human Rights and over 450 civil rights organizations outlining the minimum of what is needed to begin the process of reforming our policing system.<sup>i</sup> Many of these recommendations were included in the George Floyd Justice in Policing Act. They include: (1) creating a federal standard that permits the use of force **only when necessary** and only after all other reasonable options have been exhausted; (2) banning the use of chokeholds; (3) demilitarizing law enforcement agencies; (4) prohibiting no-knock warrants; (5) eliminating the judge-made doctrine of qualified-immunity (6) including include a lower *mens rea* of “reckless negligence” in 18 U.S.C. § 242 (7) creating a national registry of officers who have engaged in misconduct; and (8) banning racial profiling.

The SPLC Action Fund opposes any legislation, such as the recently introduced Justice Act, that does not include all the above elements. We need bold action that will move us forward. The Justice Act fails to do that.

## **No One Else Should Die**

The past several weeks have been a painful reminder that Black people die all too often at the hands of police officers. Despite weeks of protests and intense public scrutiny of the police, Rayshard Brooks was killed by Atlanta police on Friday, June 12. According to reports and video footage, a police officer shot Mr. Brooks twice in the back because Mr. Brooks pointed a Taser at the officer’s head.<sup>ii</sup> Mr. Brooks’ death is just one in a string of murders in the last three months that began when Breonna Taylor was shot and killed while sleeping in her Louisville, Kentucky, home on March 13 by police officers executing a no-knock drug warrant for someone who did not live at her house and had already been taken into custody.<sup>iii</sup> Dreasjon “Sean” Reed was killed in Indianapolis, Indiana, on May 6, 2020;<sup>iv</sup> Maurice Gordon, in Bass River, New Jersey, on May 23, 2020;<sup>v</sup> Yassin Mohamed in Evans County, Georgia, on May 9, 2020;<sup>vi</sup> Tony McDade in Tallahassee, Florida, on May 27, 2020.<sup>vii</sup> This bloodshed is intolerable and must stop.

And there are so many others. On January 13, 2019, 61-year-old George Robinson died of blunt force trauma to the head at the hands of Jackson, Mississippi, police officers.<sup>viii</sup> On November 18, 2018, Hoover, Alabama, police responding to reports of gunshots in a mall killed 21-year-old Emantic (EJ) Fitzgerald Bradford, Jr. Bradford, who was legally carrying a gun, was directing people to safety when the police arrived and shot him three times in the back, assuming he was the shooter.<sup>ix</sup> On January 27, 2018, Jackson, Mississippi, police officers killed 21-year-old Crystalline Barnes, a mother of two, during a traffic stop.<sup>x</sup> On July 5, 2016,

27-year-old Alton Sterling was killed by a Baton Rouge, Louisiana, police as he sold CDs outside a convenience store.<sup>xi</sup> On February 25, 2016, the Montgomery, Alabama, police shot and killed unarmed 58-year-old Gregory Gunn, the son of a former Montgomery police officer, near his home.<sup>xii</sup>

Police do not have to pull the trigger to contribute to the violence and deaths, as the testimony of S. Lee Merritt to this committee made clear. Ahamaud Arbery was killed after Glynn County Police Officer Ronald Rash encouraged people in Brunswick, Georgia to pursue vigilantism in response to having a Black man regularly run through their neighborhood. Former police officer Gregory McMichael hunted and ultimately killed Mr. Arbery because he was a Black man who decided to go for a jog in a white neighborhood.<sup>xiii</sup> The Glynn County police and the local district attorney's office then attempted to cover up the murder, telling Mr. Arbery's family that he was killed while committing a crime.<sup>xiv</sup> It took the sustained efforts of community activists and the release of a video of Mr. Arbery's death before the Georgia Bureau of Investigation opened an investigation into the murder and charged those responsible.

The history of racism in Glynn County runs deep. Almost 129 years before Mr. Arbery was killed by white vigilantes, another group of white men lynched two black men just outside of Brunswick. According to a contemporaneous newspaper report " . . . the population of Brunswick turned out en masse to visit the scene of the lynching."<sup>xv</sup> There are echoes of the crowd in the video of Mr. Arbery's death, recorded by William Bryan, one of the vigilantes. Just as Derrick Chauvin so believed in his own righteousness that he looked directly at the cameras as he killed George Floyd, William Bryan too believed enough in the righteousness of his actions that he recorded himself and his friends chasing and ultimately killing Mr. Arbery.

## **A System Rooted in White Supremacy**

The racism and corruption in the Glynn County Police Department are mirrored in law enforcement agencies across the country. Racism does not have to be overt to do harm. White supremacy is built into the very fabric of our policing system, which is rooted in slave patrols created in the 18th-century South to prevent uprisings and control the movement and behavior of enslaved people.<sup>xvi</sup> Slave patrols gave way to professionalized police forces after the Civil War, which were tasked with enforcing Black Codes that dictated the terms and pay of Black people's labor, criminalized vagrancy, and placed those who did not enter exploitative labor contracts in the convict leasing system.<sup>xvii</sup> That control continued into the Jim Crow era, when police in the South allowed the Ku Klux Klan, White Citizens' Councils, and white mobs to terrorize, surveil, and lynch Black people. Indeed, the police and the Klan were

often one in the same. Herbert Jenkins, who became Atlanta chief of police in 1947, recalled that “at one time most of the members of the police department were members of the Ku Klux Klan.” Some openly celebrated killing black people while in the line of duty.<sup>xviii</sup>

Throughout the South, police brutally suppressed Black political organizing and protest during the civil rights era. Southern states reinforced these actions by creating wholly new investigatory agencies to uphold segregation.<sup>xix</sup> The 1968 Kerner Commission Report – which investigated the causes of uprising in Black communities around the country the year prior – found that “police have come to symbolize white power, white racism and white repression.”<sup>xx</sup> Rather than reform our racist system of law enforcement in the years since that report was published, our nation’s police departments increasingly targeted Black neighborhoods for petty crimes, arrested Black people at disproportionate rates, and received billions of dollars of military equipment.<sup>xxi</sup> Racism is so pervasive in policing that, in one Mississippi sheriff’s department, case file cover sheets came with the fields for “black,” “male,” and “arrested” already marked.<sup>xxii</sup> According to a 2017 report by the PEW Research Center, 56% of officers believe that an aggressive rather than courteous approach is more effective in certain neighborhoods.<sup>xxiii</sup>

White supremacy remains a problem in our nation’s law enforcement. A 2019 investigation found nearly 400 active-duty and retired members of law enforcement who were members of racist, misogynistic, and anti-government Facebook groups.<sup>xxiv</sup> The FBI even recognized the pervasive presence of white supremacists in law enforcement. A 2015 document leaked to *The Intercept* noted that “domestic terrorism investigations focused on militia extremists, white supremacist extremists, and sovereign citizen extremists often have identified active links to law enforcement officers.”<sup>xxv</sup> A police officer does not need to be a member of the organized hate movement to engage in discriminatory policing, but the vast overlap between extremists and law enforcement agencies speaks to the extent to which white supremacy is entrenched in our nation’s police departments.

## **Now is the Time for Bold and Decisive Action**

The SPLC Action Fund calls on Congress to immediately enact comprehensive legislation to address the systemic and root causes of police violence.

### ***End Excessive Use of Force***

Police too often use force as a primary means of control. George Floyd was physically pulled from his car before Derrek Chauvin killed him using a chokehold that is banned in many jurisdictions. Numerous videos taken during the protests show police using batons, tear gas, pepper spray, and rubber bullets on protestors, bystanders, and journalists often without warning or provocation.<sup>xxvi</sup> According to the FBI, just over 40 percent of the nation's 18,000 law enforcement agencies voluntarily report use of force incidents.<sup>xxvii</sup> And, data from Florida illustrates the chaos and absence of data reliability resulting from the lack of federal standards as multiple police departments within that state dispute federally-reported use of force statistics.<sup>xxviii</sup> Congress must take steps to end the use of excessive force now.

Legislation must:

- Require the adoption of a federal standard that permits the use of force **only when necessary** and only after all other reasonable options have been exhausted;
- Require the use of de-escalation techniques;
- Require officers to intervene if they see another officer using excessive force;
- Prohibit the use of force as a punitive measure or means of retaliation against individuals who verbally confront officers or against people who only pose a danger to themselves;
- Require all officers to accurately report any use of force; and
- Prohibit the use of chokeholds, neck holds, and any maneuver that restricts the flow of blood or oxygen to the brain by deeming them to be a federal civil rights violation.

### ***End Federal Programs that Enable Militarization of the Police***

As we have seen all too clearly in the past few weeks, a militarized police force frequently leads to abuses, increases tensions, and intimidates communities. In response to the rash of murders, protests have swept the South – from Mobile to Montgomery, Birmingham to Huntsville, Miami to Orlando, Gulfport to Oxford, Atlanta to Brunswick, New Orleans to Baton Rouge. Yet, too often, these protests were met with more police violence. In Atlanta, two Black students from Spelman and Morehouse colleges were followed by police after observing and documenting some arrests from their car. The officers shattered the windows of the vehicle and tased the students who were forcibly taken from the car and arrested by multiple officers.<sup>xxix</sup> Police in Huntsville, Alabama, used tear gas, pepper spray, flash bangs, and rubber bullets against protestors, medical volunteers and local reporters, despite no evidence of threats to individuals or property.<sup>xxx</sup> In Ft. Lauderdale, police cracked the skull of LaToya Ratlieff when an officer fired a foam bullet at her head as she and others kneeled on

the ground and begged the officers--dressed in full riot gear--to stop spraying tear gas into the crowd of peaceful protesters.<sup>xxxii</sup> Police used tear gas two days in a row in Orlando to disperse crowds of peaceful protestors who had gathered in response to George Floyd's murder.<sup>xxxiii</sup> In Temple Terrace just outside of Tampa, multiple protesters reported that rubber bullets were fired at them by police in riot gear.<sup>xxxiii</sup>

It is unsurprising that protestors in the South were met with a military style response. Three states in the SPLC Action Fund's footprint – Florida, Alabama, and Georgia -- received over a fifth of the total value of surplus Department of Defense gear nationwide.<sup>xxxiv</sup> Florida alone received over \$304 billion in surplus military equipment, including 1,800 assault rifles, and a dozen armored combat vehicles. Overall, the most popular surplus transfers to local police are 5.56 mm assault rifles and magazine cartridges.<sup>xxxv</sup>

Congress must act to end federal programs that enable the militarization of the police, such as the U.S. Department of Defense 1033 Excess Property Program, that provide for transfers of military equipment to the police and enact the Stop Militarizing Law Enforcement Act.

### ***Prohibit the use of no-knock warrants***

When the Louisville Metro Police Department arrived at the home Breonna Taylor, a 26-year old emergency care technician, around 12:40 a.m., they did not wait for someone to answer the door to announce themselves or explain their purpose. The plain-clothed officers had a no-knock search warrant for drugs. However, no drugs were found in the home and the suspect of the investigation had already been taken into custody at another residence. Ms. Taylor was shot at least eight times while asleep in her bed. Three months following Ms. Taylor's death, one of the three officers involved was fired; the remaining are still on administrative leave. Since then, the Louisville City Council banned no-knock warrants.<sup>xxxvi</sup>

Execution of no-knock warrants are fraught with errors and dangers yet bring little consequences for officers involved in same. Prosecutors declined to bring charges against Deputy Vance Matranga Jr., a nine-year veteran of the West Baton Rouge Parish Sheriff's Office, who fatally shot a Port Allen man employing a no-knock warrant with four other officers. During the July 2019 raid, Matranga fired his gun once, striking 38-year old Josef Richardson and severing his spinal cord.<sup>xxxvii</sup> In November 2019, the Calcasieu Parish Sheriff's Office secured a no-knock warrant to arrest Jacoby James, accused of numerous felonies. Mistakenly, a SWAT team stormed the house of a retired teacher and pastor while two of their grandchildren were with them. The family was detained for 20 minutes while deputies

searched the home. The sheriff apologized and noted “mistakes like this” shouldn’t happen, but the officers involved were not disciplined.<sup>xxxviii</sup> Congress must ban the use of no-knock warrants to prevent “mistakes” like these.

## ***Ensure Accountability***

Too often, police are not held accountable for their actions. Timothy Loehmann, who killed 12-year old Tamir Rice was never charged with a crime. Although he lost his job with the Cleveland police department, he was hired by another Ohio police department a few years later.<sup>xxxix</sup> Jerimono Yanex, who shot and killed Philando Castille was acquitted of all charges. The two officers who killed Alto Sterling were never charged with a crime. More recently, the officers who shot and killed Breonna Taylor have yet to be charged. One study, looking at 104 cases where law enforcement officers were arrested for murder or manslaughter resulting from on on-duty shooting, found that only 35 resulted in any type of criminal conviction. Officers received murder convictions in only four of those cases. In all other instances, the convictions were for lesser offenses.<sup>xl</sup> A recent analysis of data from the Florida Department of Law Enforcement indicates most officers disciplined due to excessive force violations kept their positions within law enforcement. From 1985 to mid-2018, there were 1,671 cases in Florida in which deputies, police officers, and jail and prison guards were disciplined by their respective agencies for using excessive force; that is the equivalent of nearly one excessive force case per week since Florida’s Criminal Justice Standards and Training Commission began tracking discipline cases in 1985. Fewer than one-third of those cases resulted in the officers’ termination or resignation, and approximately 20 percent of those disciplined obtained other positions within law enforcement or the carceral system.<sup>xli</sup>

In addition, the court-created qualified immunity doctrine has been interpreted so broadly as to shield officers from liability for egregious and violent violations of people’s constitutional rights. The immunity is not only a shield from personal liability, but also protects police and other officials from being held accountable at trial in the first place. The Supreme Court has held that petitioners cannot prevail unless they successfully demonstrate that police officers violated “clearly established rights,” including Fourth Amendment excessive use of force claims. The practical effect of this precedent has been to block countless allegations of excessive use of force because of the Court’s requirement for officers to have been “put on notice” by other, factually similar cases that conclude such official conduct violates constitutional rights. Thus, trial courts may skip weighing whether an officer violated the law by merely finding that no prior law or case says they did.<sup>xlii</sup> For example, the Eleventh Circuit held that qualified immunity protected an Alabama deputy who used a Taser 13 times on Khari Illidge, an unarmed Black man, who subsequently died.<sup>xliii</sup> Although the deputy had violated both the Taser guidelines and police training, the court held that the deputy did not



violate clearly established law relating to the excessive use of force.<sup>xliv</sup> In 2014, 63-year-old Arthur Green Jr. died in Tampa police custody after having a diabetic emergency while driving, which caused him to swerve his vehicle. Police officers assumed criminal intent and pulled him from the vehicle he was driving. Like the circumstances in which George Floyd was killed, a police officer put his knees on Mr. Green's back and neck while another officer pushed his knees forward to cause positional asphyxiation, and this excessive force caused the asphyxiation and death of Arthur Green Jr. However, because there was no factually similar case to point to as indicative of the police officers' violation of "clearly established rights," the qualified immunity doctrine barred the Green family's claim from even going to trial.<sup>xlv</sup> As these opinions illustrate, in order to ensure federal accountability for officers who violate constitutional rights, laws, and policies, Congress must end the qualified immunity doctrine in Section 1983 claims by amending 18 U.S.C. § 242 to include a *mens rea* of "reckless negligence" and eliminate the "clearly established rights" precedent once and for all.

The lack of data on police misconduct also makes it harder to hold police accountable, harder for the public and researchers to provide oversight and analysis and easier for police officers, and harder for police departments to make informed hiring decisions. Congress must create a national, comprehensive public database to track the names of officers who have had their licenses revoked or been terminated, as well as complaints against officers.

### ***Prohibit Discrimination***

Congress must uphold and enforce the principle of equal treatment under the law by prohibiting racial profiling and requiring robust data collection as a condition of receiving federal funding. Disproportionately deploying law enforcement resources to patrol, investigate and enforce laws against communities of color undermines Constitutional protections. Currently, many state statutes only prohibit racial profiling when a prohibited factor is the sole reason for the stop. This, in effect, permits officers to discriminate based on race so long as they can point to any other reasonably legitimate reason for making the stop.<sup>xlvi</sup> Such racial profiling leads to over policing of communities of color and spreads distrust and sows fear, hindering community policing efforts.

In addition, many state statutes only prohibit profiling based on perceived race, ethnicity, and national origin and thus permit law enforcement officers to profile based on other categories, such as age, religion, gender, or sexual orientation. Congress must prohibit police departments from targeting individuals based on personal characteristics including race,



ethnicity, national origin, religion, gender, gender identity, sexual orientation, age, disability, English proficiency, and immigration or housing status.

## ***Divest from the Police and Invest in Communities***

These recommendations are the just the first steps towards change; a fundamental transformation, centered on divestment from policing and over-incarceration and investment in community programs, accessible housing and food assistance, medical and mental health services, education, and other supports must be the ultimate goal for public safety. Policing and punishment should not be used to address social problems. Police officers are not educators, social workers, substance use counselors, or mental health experts. Asking them to play those roles harms both police officers and our communities. Someone in need of a place to stay, considering self-harm, on who has overdosed on drugs should be met by people who are trained to provide the care they need and not with threats of arrest and demands of compliance at the risk of being tased, arrested, or shot.

Rayshard Brooks would still be alive today if someone had gotten him a ride home. Instead, two police officers responded to a call after Mr. Brooks fell asleep in the driver's seat of his car in the drive through lane at Wendy's. The encounter quickly escalated after officers decided to arrest Mr. Brooks, something they did not need to do. Mr. Brooks bolted, grabbing a Taser and firing it at the officers after one of the officers places his hands on Mr. Brooks without warning him that he was being arrested. Officer Garrett Rolfe shot Mr. Brooks twice in the back, then kicked him as he lay dying while Officer Devin Brosnin stood on Mr. Brooks' shoulder. This should never have happened.

Communities will thrive if we invest in education, health care, housing, parks and recreation programs, job training programs, and community-based services, including trauma-informed and culturally appropriate substance and mental health treatment. We must end the over-policing of Black and brown communities and create a world in which everyone feels safe and free to walk down their own streets. Crucially, Congress must not provide any additional federal funding to police departments and should enact prohibitions against federal funding for law enforcement and surveillance in schools. Instead, federal funding should go to support community led programs aimed at transforming and re-imagining what it means to create safe communities.

## Conclusion

The sustained demonstrations that roiled the nation over the month are born of deep anger, frustration, and pain at the entrenched systemic racism in our policing systems. The SPLC Action Fund calls on Congress to be visionary and bold. Pass legislation to implement meaningful, transformative changes to our police system: changes that will protect communities of color, end police brutality, and entrench the principles of fairness and equality. This moment requires nothing less.

For further information, please contact Kelli Garcia, federal policy counsel, by email at [kelli.garcia@splcenter.org](mailto:kelli.garcia@splcenter.org) or by phone at 202-916-7368.

Sincerely,



Margaret Huang  
President and CEO  
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<sup>i</sup> “Civil Rights Coalition Letter on Federal Policing Priorities,” June 1, 2020. <https://civilrights.org/resource/civil-rights-coalition-letter-on-federal-policing-priorities/>

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