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Sen. Cory Booker  
Senate Sponsor of S.3912, the Justice in Policing Act of 2020 in the 116th Congress  
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**Re: George Floyd Justice in Policing Act**

Dear Chairman Nadler, Chairwoman Lee, Representative Bass, and Senator Booker,

As you undertake your work at the beginning of this 117<sup>th</sup> congressional session, police abuse and brutality in the United States remains at a crisis point. Despite mass protests sparked by the killing of George Floyd and others, police killed 1,127 people in 2020, more than in 2019 though consistent with years past. That number includes 645 killings since Floyd's death.<sup>1</sup> Police have subjected countless more—most frequently Black, Latinx, and Indigenous people, people living in poverty, and people with disabilities—to other abuses through much more common daily interactions that are coercive and often violent, even if they do not result in death. These abuses contribute to high rates of arrest and mass incarceration, with devastating long-term consequences for these communities.

As you consider federal legislative solutions this congressional session, we urge you to think broadly, and beyond reforms previously proposed. We

<sup>1</sup> Mapping Police Violence, October 28, 2020, <https://mappingpoliceviolence.org/> (accessed February 3, 2021) (In 2019 police killed 1,096 people; in 2018, they killed 1,145 people; in 2017, they killed 1,091 people; in 2016, they 1070 people; and in 2015, they killed 1,012 people).

commend you for acting quickly in response to the killing of George Floyd by introducing the Justice in Policing Act (JPA), proposed and passed by the House in the 116<sup>th</sup> Congress.<sup>2</sup> However, research by Human Rights Watch and others has shown that police violence is inextricably linked to deep and persisting racial inequities and economic class divisions, perpetuated and exacerbated by laws and policies that prioritize policing and criminalization as the primary state response to a range of societal problems.<sup>3</sup> When introduced, supporters claimed the JPA was “bold,” and “comprehensive,”—something that would “change the culture of law enforcement.”<sup>4</sup> But for legislation to be meaningful and effective, it needs to address these societal conditions at their root not simply by modifying the law enforcement responses to them.

The reforms the House-JPA proposes focus on fixing discrete aspects of policing and many do not go far enough to address the problems the bill aims to solve. The bill also authorizes hundreds of millions of dollars to support law enforcement for the hiring of more police officers, more police training, the establishment of various task forces, the creation of police accreditation programs, and more research into police “best practices.” This approach suggests that law enforcement needs more money to do their jobs appropriately and to respect human rights in line with domestic and international legal and constitutional standards and their ethical obligations. In some cases, providing, conditioning, or withholding funds to or from law enforcement can encourage police to adopt certain policies or practice. Funding may also be necessary to strengthen police accountability mechanisms, so long as they are genuine and meaningful, or for other clearly defined and important purposes (e.g., rape kit testing) that contain clear and effective safeguards against misuse and further the protection of human rights. However, the federal government has sought for decades to incentivize better conduct on the part of police departments with little success and at great expense.<sup>5</sup> It is time to rethink the rote provisions frequently included in federal legislation relating to

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<sup>2</sup> “George Floyd Justice in Policing Act of 2020,” H.R.7120, 116<sup>th</sup> Cong. (2019), <https://www.congress.gov/bill/116th-congress/house-bill/7120/text?q=%7B%22search%22%3A%22%5C%22profiling+act%5C%22%22%7D&r=1&s=1#toc-HB6C9D8DE9D2F43DD85C1C3386B17AA90> (accessed February 3, 2021).

<sup>3</sup> Human Rights Watch, ““Get on the Ground!”: Policing, Poverty, and Racial Inequality in Tulsa, Oklahoma,” <https://www.hrw.org/news/2019/09/12/us-how-abusive-biased-policing-destroys-lives>, Sept. 12, 2019; “A Roadmap for Re-imagining Public Safety in the United States,” Human Rights Watch, August 12, 2020; Danyelle Solomon, “The Intersection of Policing and Race,” Center for American Progress, Sept. 1, 2016, <https://www.americanprogress.org/issues/race/reports/2016/09/01/143357/the-intersection-of-policing-and-race/> (accessed February 1, 2021); Anthony D. Romero, “Reimagining the Role of Police,” American Civil Liberties Union, June 5, 2020, <https://www.aclu.org/news/criminal-law-reform/reimagining-the-role-of-police/> (accessed February 2, 2021); Alexi Jones and Wendy Sawyer, “Arrest, Release, Repeat: How police and jails are misused to respond to social problems,” Prison Policy Initiative, August 2019, <https://www.prisonpolicy.org/reports/repeatarrests.html> (accessed February 1, 2021); Marc Mauer and Nazgol Ghandnoosh, “Incorporating Racial Equity into Criminal Justice Reform,” The Sentencing Project, <https://www.safetyandjusticechallenge.org/wp-content/uploads/2015/05/incorporating-racial-equity-into-criminal-justice-reform.pdf> (accessed February 1, 2021).

<sup>4</sup> “Chair Bass, Senators Booker and Harris, and Chair Nadler Introduce the Justice in Policing Act of 2020,” Press Release, June 8, 2020, <https://bass.house.gov/media-center/press-releases/chair-bass-senators-booker-and-harris-and-chair-nadler-introduce-justice> (accessed January 4, 2020).

<sup>5</sup> Robin S. Engel, Hannah D. McManus, Gabrielle T. Isaza, “Moving beyond ‘Best Practice’: Experiences in Police Reform and a Call for Evidence to Reduce Officer-Involved Shootings, February 13, 2020, <https://journals.sagepub.com/doi/10.1177/0002716219889328> (accessed January 1, 2021) (“Of the litany of recommendations believed to reduce police shootings, five have garnered widespread support: body-worn cameras, de-escalation training, implicit bias training, early intervention systems, and civilian oversight. These highly endorsed interventions, however, are not supported by a strong body of empirical evidence that demonstrates their effectiveness.”); Erin Shumaker, “Police reformers push for de-escalation training, but the jury is out on its effectiveness,” *ABC News*, July 5, 2020, <https://abcnews.go.com/Health/police-reformers-push-de-escalation-training-juryeffectiveness/story?id=71262003> (accessed August 31, 2020); Stacey McKenna, “Police Violence Calls for Measures beyond De-escalation Training,” *Scientific American*, on June 17, 2020, <https://www.scientificamerican.com/article/police-violence-calls-for-measures-beyond-de-escalation-training1/> (accessed Sept. 17, 2020). (“Although a review of cross-disciplinary research on de-escalation found that such training probably has slight-to-moderate benefits and few drawbacks, much of the research has methodological weaknesses—including a lack of control groups, dependence on correlational designs and use of self-reporting rather than observation-based data. Thus, despite promising early findings, Engel argues that there is not yet enough systematic research about de-escalation in policing to show it is effective or to guide its use.”).

law enforcement for this purpose<sup>6</sup> and instead focus on making transformative investments in community-led solutions that improve access to housing, education, job opportunities, youth programs, and health care—including care for mental health and substance use disorders. There is substantial evidence that investing in many of these things reduces crime and improves public safety.<sup>7</sup>

The Movement for Black Lives is currently drafting language for a bill, the Breathe Act, aimed at furthering many of these recommendations by divesting funds from law enforcement and investing them in a new vision of public safety.<sup>8</sup> Making this shift, along with establishing effective and independent oversight bodies, the necessary legal tools to ensure accountability for police abuse, and improving transparency, is essential to limiting the police violence that has caused so much harm.

The JPA does include positive provisions. While enacting these provisions will not bring about the fundamental reforms necessary to address the country’s pervasive police violence and systemic racism, we support passing them, either as separate bills, or as part of a larger package, in some cases with amendments, so long as doing so does not increase law enforcement funding beyond what is necessary to implement the provisions proposed or entail making further concessions that unnecessarily expand law enforcement’s scope. Please find below a summary of the provisions that are included in the JPA that Human Rights Watch supports, along with some suggested changes, and commentary.

We would be grateful for the opportunity to discuss these issues with you in more detail during a virtual or in person meeting.

Sincerely,



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Deputy Director, US Program  
Human Rights Watch



John Raphling  
Senior Researcher, US Program  
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<sup>6</sup> Jon Frank, “Justice Department Issues Changes to Largest Criminal Justice Grant,” Brennan Center, January 8, 2016, <https://www.brennancenter.org/our-work/analysis-opinion/justice-department-issues-changes-largest-criminal-justice-grant> (accessed January 4, 2020) (“Today, Washington sends \$3.8 billion in funds to states for criminal justice. These dollars are still largely on autopilot, working to subsidize mass incarceration across the country.”). See also Mike Crowley and Betsy Pearl, “Reimagining Federal Grants for Public Safety and Criminal Justice Reform,” Center for American Progress, October 7, 2020, <https://www.americanprogress.org/issues/criminal-justice/reports/2020/10/07/491314/reimagining-federal-grants-public-safety-criminal-justice-reform/> (accessed January 5, 2020) (“The leading public safety grants, such as the Edward Byrne Memorial Justice Assistance Grants (JAG), give maximum flexibility to recipient jurisdictions to use the funds how they see fit with few meaningful constraints.”).

<sup>7</sup> “Roadmap for Re-imagining Public Safety in the US,” Human Rights Watch, August 12, 2020, [https://www.hrw.org/sites/default/files/media\\_2020/08/A%20Roadmap%20for%20Re-imagining%20Public%20Safety%20in%20the%20United%20States.pdf](https://www.hrw.org/sites/default/files/media_2020/08/A%20Roadmap%20for%20Re-imagining%20Public%20Safety%20in%20the%20United%20States.pdf), p. 24 and sources cited.

<sup>8</sup> “The Breathe Act,” Section by Section Summary, [https://breatheact.org/wp-content/uploads/2020/07/The-BREATHE-Act-PDF\\_FINAL3-1.pdf](https://breatheact.org/wp-content/uploads/2020/07/The-BREATHE-Act-PDF_FINAL3-1.pdf) (accessed January 4, 2020).

**Prosecutions for Unlawful Conduct.** Section 101 of the bill changes the standard for prosecuting 18 USC 242 cases—a statute that enables federal prosecutors to criminally charge law enforcement officers with violating people’s civil rights—from “willfully” to “knowingly or recklessly.” This change aims to remove an intent requirement that some prosecutors claim has made it difficult to bring Section 242 cases.<sup>9</sup> This may increase the number of Section 242 cases brought at the federal level, which currently is extremely low compared to the number of complaints received,<sup>10</sup> if prosecutors are willing to bring cases. However, some scholars argue that federal prosecutors already have the tools to bring more cases against police officers for unlawful conduct but have failed to do so.<sup>11</sup> Human Rights Watch recommends enacting this change but believes that without changes in prosecutorial decision-making, it is likely to have limited impact.

**Qualified Immunity:** Section 102 of the bill prevents local and federal law enforcement officers from raising the defense of “qualified immunity”—a judge-made doctrine that provides officers and other government actors immunity to civil lawsuits alleging constitutional violations, even when such violations are proven, if a judge finds the constitutional right was not “clearly established” by past precedent. This doctrine gives judges who are unsympathetic to civil rights plaintiffs’ great discretion to deny liability claims. Even without “qualified immunity,” judges have other tools to influence these cases, but Human Rights Watch supports removing this legal defense to improve enforcement of constitutional rights in civil courts.

**Unlawful Pattern and Practice Investigations.** Section 103 expands the scope of authority for the US Attorney General to bring investigations against law enforcement who engage in patterns and practices of civil rights violation, to include cases against prosecutors as well. It gives the Attorney General subpoena power to obtain information, documents, reports, records, accounts, papers, and other data, as well as compel testimony, enforceable by a court, and grants state attorneys general the same powers in pursuing these investigations.

It authorizes the Attorney General to give grant funds to states to assist them in conducting pattern and practice investigations. It also prevents law enforcement agencies from receiving any funding from the Byrne Grant Program (Byrne)<sup>12</sup> or the Community Oriented Policing Services (COPS) programs if those agencies are bound by contractual obligations, including union labor contracts,

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<sup>9</sup> Paul Savoy, “Reopening Ferguson and Rethinking Civil Rights Prosecutions,” N.Y.U. Review of Law and Social Change, Vol. 41, Issue 2, [https://socialchangenyu.com/wp-content/uploads/2017/06/savoy\\_digital\\_5-30-171.pdf](https://socialchangenyu.com/wp-content/uploads/2017/06/savoy_digital_5-30-171.pdf), p. 284; see also Sari Horwitz and Kimberly Kindy, “Federal civil rights charges unlikely against police officer in Ferguson shooting,” *Washington Post*, October 31, 2014, [https://www.washingtonpost.com/world/national-security/federal-civil-rights-charges-unlikely-against-police-officer-in-ferguson-shooting/2014/10/31/56189d80-6055-11e4-8b9e-2ccdac31a031\\_story.html](https://www.washingtonpost.com/world/national-security/federal-civil-rights-charges-unlikely-against-police-officer-in-ferguson-shooting/2014/10/31/56189d80-6055-11e4-8b9e-2ccdac31a031_story.html) (accessed January 22, 2021); Tom Jackman and Devlin Barrett, “Charging officers with crimes is still difficult for prosecutors,” *Washington Post*, May 29, 2020 <https://www.washingtonpost.com/crime-law/2020/05/29/charging-cops-with-crimes-is-still-difficult-prosecutors/> (accessed January 22, 2021).

<sup>10</sup> Police Officers Rarely Charged for Excessive Use of Force in Federal Court, TRAC Reports, June 17, 2020, <https://trac.syr.edu/tracreports/crim/615/> (accessed February 3, 2021) (“...federal prosecutors receive at least ten times more criminal referrals than they prosecute. Nine out of ten are turned down—that is, closed without filing any prosecution.”).

<sup>11</sup> Paul Savoy, N.Y.U. Review of Law & Social Change, Paul Savoy, “Reopening Ferguson and Rethinking Civil Rights Prosecutions,” Vol. 41, Issue 2, <https://socialchangenyu.com/review/reopening-ferguson-and-rethinking-civil-rights-prosecutions/> (accessed January 5, 2020), (arguing that Section 242 “does not pose as high a hurdle to civil rights prosecutions as most lower federal courts and practitioners, including lawyers in the Civil Rights Division of the Justice Department, have long supposed.... It makes no sense for advocates of policing reform to call for the Justice Department to take over all investigations of officer-involved shootings, as the 2016 Democratic National Platform proposed, as long as the Department continues to construe willfulness to require consciousness of wrongdoing.”), pp. 284, 321, and 323.

<sup>12</sup> This refers to funding made available under subpart 1 of part E of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (34 U.S.C. 10151 et seq.), without regard to whether the funds are characterized as being made available under the Edward Byrne Memorial State and Local Law Enforcement Assistance Programs, the Local Government Law Enforcement Block Grants Program, the Edward Byrne Memorial Justice Assistance Grant Program, or otherwise. See JPA Section 2, Definitions.

that would prevent them from entering into consent decrees resulting from a pattern or practice investigation or that contradicts any provision in such decree.

Pattern and practice investigations and lawsuits can be effective mechanisms to reform law enforcement agencies that pervasively violate rights if Attorneys General pursue them and if they fashion far-reaching remedies. The enhanced powers proposed in this legislation will give willing officials useful tools to make reforms, and, therefore, should be enacted.

**Independent Investigations.** Section 104 authorizes the provision of funding to states that enact statutes authorizing independent investigations and prosecutions of police involved in deadly force incidents. However, some of the entities authorized under the statute to carry out these investigations will likely not be fully independent or have sufficient enforcement powers. For example, the bill would authorize and fund Civilian Complaint Review Boards (CCRBs) that have subpoena power, are “independent,” represent “community diversity,” and have “investigatory authority”—all things that make CCRBs stronger. But the bill would not require those CCRBs that receive funding to have the authority to fire or discipline officers, nor would it incentivize the creation of such authority. Without these powers the CCRBs will be merely advisory. The other types of bodies authorized for “independent investigations” under this section remain closely tied to law enforcement and for the most part have no guarantee of true independence.

Section 104(a)(1)(A)(v), which assigns such investigations to other law enforcement agencies, should be eliminated as it will undermine impartiality by allowing law enforcement agencies to simply investigate each other. While this section may incentivize more investigations, it may also provide funding to entities that in some cases provide a veneer of accountability without actually delivering it.

Creating mechanisms for independent investigations of police is a worthwhile reform. Congress should amend this section to incentivize the creation of truly independent bodies, not tied to existing law enforcement agencies, that have the authority and capacity to conduct investigations and fire or discipline officers. Additionally, as currently written, these independent investigations only apply to “deadly force” incidents which comprise a relatively small portion of those that need to be independently investigated. Congress should encourage expanding independent investigative and prosecutorial authority to all instances of police misconduct.

**Data Collection and Transparency.** Section 118 requires law enforcement agencies to report data on a variety of law enforcement practices, including traffic and pedestrian stops, searches, and deadly force to the Attorney General. This data would be broken down by race, ethnicity, age, and gender of the officers and members of the public involved. States will lose funding already authorized under other provisions if the Attorney General finds they are not in “substantial compliance” with the requirements, and those funds will instead go to states that are. This may encourage more and better reporting on these types of incidents. Congress should expand the period for which the agencies that do the reporting are required to keep records of it, which the bill now sets at four years. Congress should also expand the categories of data required to be reported, including adding all “non-deadly” force incidents, arrests, vehicle and property searches, asset seizures, and other common law enforcement interactions with the public.

Section 201 establishes a National Police Misconduct Registry to be maintained at the Justice Department, and section 202(a)(2) includes provisions that denies Byrne funding for non-

compliance. Under this section, the heads of each federal law enforcement agency and states that receive Byrne funding will be required to submit to the Attorney General information relating to misconduct complaints, at various stages of review (founded, unfounded, or under investigation for example), about federal and state law enforcement officers, and whether these complaints involved use of force or racial profiling. This registry could be useful, but Congress should expand it to include the collection of information related to complaints against officers related to other abuses, such as sexual assault, domestic violence, harassment, violence toward children under age 18, unlawful detentions, searches or arrests, dishonesty, perjury, tampering with or destroying evidence, bias or other civil rights violations, and the commission of other violations and crimes. The data collected should be available in its most disaggregated form and include information about race, ethnicity, age, and gender of those involved.

Sections 222-227 also require that states and Indian tribes that receive Byrne funding provide the Attorney General information about uses of force carried out by or against law enforcement; some funds can be withheld for non-compliance. The data collection requirements may have value if they can be used to track problematic departments and officers, and if they have adequate safeguards against manipulation of data by the reporting agencies. However, as currently written, the bill provides unlimited funding for implementation, including funding for training and public awareness campaigns. This data collection requirement should not become an excuse for unnecessary additional spending on law enforcement.

**Racial Profiling.** Sections 301-351 are aimed at stopping police departments from engaging in racial profiling. The provisions, among other things, require the creation of policies against the practice, require data collection that may make it easier to detect it, and create a legal cause of action for injunctive relief to prevent it. Creating policies against racial profiling is important, but policies do not necessarily translate into improved practice. Racial profiling already violates “equal protection” and police departments do not have policies that authorize it. Instead, they routinely claim other justifications, such as traffic infractions or public order offenses, as reasons for stops that may be based on race.<sup>13</sup> As a result, documenting and proving racial intent behind an enforcement action is extremely difficult. For example, from 2016 through 2019, 92 percent of California law enforcement agencies that reported receiving complaints of racial profiling rejected every one of those complaints; the Los Angeles Police Department only sustained 2 of 883 such complaints in that time period.<sup>14</sup>

Section 312 partially addresses the problem of proof by enabling plaintiffs to make a prima facie showing of racial profiling in a lawsuit against law enforcement with evidence of disparate racial impact. This change removes the requirement to show intentional discrimination, making it easier to obtain an injunction or declaratory relief for claims of racial profiling. However, law enforcement may still rebut that proof by showing non-racial justifications for their actions, even if those justifications

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<sup>13</sup> Chris Horn, “Racial disparities revealed in massive traffic stop dataset,” University of South Carolina, June 12, 2020, [https://www.sc.edu/uofsc/posts/2020/06/racial\\_disparities\\_traffic\\_stops.php#.YBSe\\_uhKg2w](https://www.sc.edu/uofsc/posts/2020/06/racial_disparities_traffic_stops.php#.YBSe_uhKg2w); Neal Augenstein, “Amid scrutiny, Montgomery Co. police explain why ‘pretext traffic stop’ is not racial profiling,” *WTOP News*, October 29, 2020, <https://wtop.com/montgomery-county/2020/10/amid-scrutiny-montgomery-co-police-argue-in-favor-of-pretext-traffic-stops/> (accessed February 1, 2021); Maddy Gates, “The Long Road to Ending Pretextual Stops,” *Harvard Civil Rights – Civil Liberties Review*, Nov. 4, 2020, <https://harvardcrcl.org/the-long-road-to-ending-pretextual-stops/> (accessed February 1, 2021).

<sup>14</sup>James Queally and Ben Poston, “For years, California police agencies have rejected almost every racial profiling complaint they received,” *Los Angeles Times*, December 14, 2020, <https://www.latimes.com/california/story/2020-12-14/california-police-racial-profiling-complaints-rejected> (accessed January 21, 2021); In previous years, the LAPD has rejected all complaints alleging racial bias. Kate Mather, “LAPD found no bias in all 1,356 complaints filed against officers,” *Los Angeles Times*, December 15, 2015, <https://www.latimes.com/local/lanow/la-me-ln-lapd-biased-policing-report-20151215-story.html> (accessed January 21, 2021).

are based on pretexts. Ideally courts will order affirmative steps to reduce the racial impact of policing, through these lawsuits. The legislation should make that power more explicit.

The data collection requirements in this section of the Act may be useful to track problem officers and agencies, though the restriction on public release of information about individual officers in Section 343 may limit that utility. The data collected should be publicly reported and available in its most disaggregated form.

These provisions also authorize funding “as necessary” to carry this out, including for training and the establishment of best practices, potentially leading to excessive, unnecessary funding. The anticipated training is of dubious usefulness in combating racial profiling and discrimination by law enforcement.<sup>15</sup> Like other funding provisions in this bill, lawmakers should consider whether the same funds might be better spent on community-led approaches to improving access to education, health, housing, or job opportunities.

**Addressing Discrete Policing Tactics.** Section 362 withholds COPS funding for states that do not enact laws banning no-knock warrants in all drug cases. It is unclear why the proposed bans would not be required in all cases, not just drug cases, and why it is not tied to Byrne funding as well. The bans should also apply to quick-knock raids, which carry the same risks involved in the execution of no-knock warrants.<sup>16</sup> Similarly, Section 363 bars states from receiving COPS or Byrne money if they do not ban “chokeholds”—defined in a way to include restrictions of airflow to the brain. These bans could have a positive impact in certain situations, but they distract from efforts at more comprehensive reform. Even with these bans on particular types of force, police may continue to use other of types of force, both lethal and non-lethal, that can cause serious physical injury, and death. Though chokeholds and no-knock warrants have captured public attention in recent years due to the deaths of Eric Garner, Breonna Taylor, and others in high-profile cases, police have killed and seriously injured people using guns, kicks and punches, body weight, baton blows, bites by trained police dogs, Tasers and other “electronic control devices,” chemical sprays, and guns that fire rubber bullets or bean bags, for example. Greater accountability, and a shifting of resources away from policing to address public safety, as described above, and below, is essential for comprehensive reform.

**Changes to Use of Force Standards.** Section 364 would legislate use of force standards for federal law enforcement officers and authorize the withholding of Byrne funds for states that do not enact the same or equivalent standards. For deadly force, the standard would be changed from “reasonable” to “necessary,” allowing an officer to use it only if deemed necessary to prevent imminent and serious bodily injury or death to the officer or another person; if it creates no substantial risk of injury to a third person; and if all reasonable alternatives have been exhausted. Less lethal force could only be used if necessary and proportional to make an arrest that is based on probable cause and after exhausting reasonable alternatives to such force. “Necessary” is defined as meaning that “another reasonable Federal law enforcement officer would objectively conclude, under the totality of the circumstances, that there was no reasonable alternative to the use of force.”

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<sup>15</sup> Martin Kaste, “NYPD Study: Implicit Bias Training Changes Minds, Not Necessarily Behavior,” *NPR*, September 10, 2020, <https://www.npr.org/2020/09/10/909380525/nypd-study-implicit-bias-training-changes-minds-not-necessarily-behavior> (accessed January 21, 2021); Rhea Mahbubani, “Officers already get training to deal with biases they may not know they have, but there’s no evidence it actually works,” *Insider*, June 16, 2020, <https://www.npr.org/2020/09/10/909380525/nypd-study-implicit-bias-training-changes-minds-not-necessarily-behavior> (accessed January 21, 2021).

<sup>16</sup> “Model Policies for Banning No-Knock and Limiting Quick-Knock Raids,” Justice Collaborative Institute, June 2020, [https://tjcinstitute.com/wp-content/uploads/2020/06/20.06\\_APPENDIX\\_No-Knock-Raids-2.pdf](https://tjcinstitute.com/wp-content/uploads/2020/06/20.06_APPENDIX_No-Knock-Raids-2.pdf) (accessed January 5, 2020).

This definition, by relying on the assumed conclusion of another law enforcement officer, potentially undermines the intent to create a stricter standard.

The change of standard could encourage prosecutors to bring charges more frequently. However, officers are likely to simply adjust the language they use to justify their uses of force to conform to its new language. Officers who use force almost invariably describe that force as unavoidable to prevent some greater harm. They usually describe split-second calculations of risks or situations in which they had no other option to explain decisions to use physical force as unavoidable, and thus reasonable. They can easily change this language to fit the legal standard, particularly with additional training on the wording of the law. Because investigations of force incidents rely largely on the officers' descriptions of their subjective interpretations of events, semantic changes in legal standards have limited usefulness.

This section requires the Attorney General to provide training on the change in the standard, an additional expenditure on law enforcement, that may result in educating officers in how to articulate legal justifications for their actions. Changing the use of force standard may have some minimal impact, but broader systemic changes to hold police accountable are necessary to ensure it makes a meaningful difference.

**Militarization of Police.** The US Department of Defense 1033 program enables the department to transfer surplus military equipment to federal, state, local, and tribal law enforcement. Since its inception, the military has transferred more than \$7.4 billion in surplus equipment and goods, including armored vehicles, rifles, and aircraft, to more than 8,000 law enforcement agencies,<sup>17</sup> leading to enhanced militarization of local policing.<sup>18</sup> Section 365 limits the transfer of certain kinds of military equipment, including firearms, grenade launchers, and drones for example, but it allows vehicles, including armored vehicles, to continue to be transferred if the Secretary of Defense considers it necessary. The section also creates new safeguards against abuse, such as requiring any entity receiving equipment under the program to return it if the Department of Justice initiates a civil rights investigation or they are otherwise found to have engaged in widespread abuses of civil liberties, and making more information about the types of equipment being transferred public. These provisions should limit the kinds and amount of military equipment transferred under the program, which is important, but the program itself, which has been notoriously mismanaged through the years,<sup>19</sup> remains intact<sup>20</sup> and it is not clear whether these provisions would address this. As for non-military equipment, such as desks and other office equipment, Congress should authorize the transfer of those items through a new agency and program that makes the equipment available to community organizations and state and local institutions beyond law enforcement.<sup>21</sup>

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<sup>17</sup> "Rights Groups Urge US Congress to End the 1033 Program, Demilitarize Police," Human Rights Watch, July 1, 2020, <https://www.hrw.org/news/2020/07/01/rights-groups-urge-us-congress-end-1033-program-demilitarize-police>.

<sup>18</sup> "War Comes Home: The Excessive Militarization of American Policing," American Civil Liberties Union, June 2014, <https://www.aclu.org/report/war-comes-home-excessive-militarization-american-police> (accessed January 1, 2020).

<sup>19</sup> Eli Hanger, "How Fake Cops Got \$1.2 Million in Real Weapons," *Wired*, July 21, 2017, <https://www.wired.com/story/gao-sting-defense-department-weapons/> (accessed Feb. 1, 2021); Arit John, "Police Departments Keep Losing Their Military Humvees and Assault Rifles," *The Atlantic*, Sept. 2, 2014, <https://www.theatlantic.com/politics/archive/2014/09/police-departments-keep-losing-their-military-humvees-and-assaultrifles/379470/> (accessed January 1, 2020); Brian Barrett, "The Pentagon's Hand-Me-Downs Helped Militarize Police. Here's How," *Wired*, June 2, 2020, <https://www.wired.com/story/pentagon-hand-me-downs-militarize-police-1033-program/> (accessed Feb. 1, 2021).

<sup>20</sup> "Civil Rights Coalition Letter on Federal Policing Priorities," Leadership Conference on Civil and Human Rights, June 1, 2020, <https://civilrights.org/resource/civil-rights-coalition-letter-on-federal-policing-priorities/> (accessed January 1, 2020).

<sup>21</sup> "Coalition Letter on H.R. 7120 'George Floyd Justice in Policing Act,'" Leadership Conference on Civil and Human Rights, June 18, 2020, <https://civilrights.org/resource/coalition-letter-on-h-r-7120-george-floyd-justice-in-policing-act/#:~:text=7120%20%E2%80%9CGeorge%20Floyd%20Justice%20in%20Policing%20Act%E2%80%9D,->



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