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WRITTEN SUBMISSION OF
THE LEADERSHIP CONFERENCE ON CIVIL AND HUMAN RIGHTS

HEARING ON
REPORTS OF IMPUNITY FOR EXTRAJUDICIAL EXECUTIONS IN THE UNITED STATES

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

166th Period of Sessions, December 7, 2017

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States, we are writing to express our deep concern over the U.S. government's failure to protect its people from extrajudicial killings by law enforcement officers. The Leadership Conference is deeply invested in promoting fair and lawful policies that further the goal of equality under law. In our view, it is the duty of law enforcement to protect and serve our communities and defend the U.S. Constitution. Despite these highly admirable goals, far too often law enforcement, and policing policies and practices, have failed to adequately protect communities of color, and at times has even acted as agents of injustice. As a result, deep mistrust and tension has developed between law enforcement and communities of color. Such tension was not born from the misconduct of a "couple of bad apples," but rather from official policies – many of which continue to disproportionally impact and harm communities of color – as well as "the actions of the past and the role that [the law enforcement] profession has played in society's historical mistreatment of communities of color."[1] Recent tragic events, such as the deaths of Michael Brown in Ferguson, Mo., Eric Garner in New York City, and Tamir Rice in Cleveland, Ohio, among others, continue to highlight the systemic issues of police misconduct that persist even today.

This year alone, at least 909 people have been shot and killed by law enforcement officers in the United States, about a third of whom were fleeing when they were shot by officers.[2] Black males are almost three times as likely, and Hispanic males are almost twice as likely, to be killed by police use of force than White males in the United States.[3] The overwhelming majority of law enforcement officers here are never charged, let alone convicted, for using excessive force against civilians.[4] All the while, tragedies like the killing of 15-year-old Jordan Edwards earlier this year illustrate that excessive force, especially against people of color, will continue to plague the United States until aggressive action is taken by government actors.

Despite these tragic events, the U.S. government has failed to adequately address this problem, and the current administration has taken steps to undermine the little progress that has been made. Over the last year, the Trump administration has chosen to dismantle several, critical police accountability programs, has largely ignored the existing laws at its disposal for holding officers accountable, has withheld information from the public, and has failed to proactively address patterns of police misconduct across the

nation.

It is the responsibility of the United States government to protect *all* of our nation's people and to actively enforce *all* of our nation's laws, including the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141, which gives the federal government the authority to investigate police departments with a pattern or practice of police misconduct, and 18 U.S.C. §§ 241 and §§ 242, which requires our government to prosecute those, including law enforcement, who deprive a person of his or her civil rights and liberties. Despite these obligations, decisions made by high-ranking government officials in recent months suggests that the government is abandoning its enforcement of these critical laws. For example, earlier this year, the Department of Justice attempted to postpone the implementation of Baltimore's carefully negotiated consent decree[5] and accepted the City of Chicago's decision to abandon the consent decree process,[6] in spite of overwhelming evidence uncovered demonstrating that the police departments in those cities had engaged in a pattern of discrimination that threatened the safety and civil rights of their residents.[7]

In addition, over the last several months, the U.S. Department of Justice has been reviewing its procedures for addressing police misconduct in order to "effectively promote a peaceful and lawful society, where the civil rights of all persons are valued and respected."[8] However, there is broad concern within the civil rights community that this justification is a smokescreen and that the government is *not* actively defending civil rights and is instead dismantling critical structures and abandoning tools that, for decades, have been used by the government to protect people from police brutality and discrimination.

Despite attempts to solicit clarification from the government, much of the government's actions – including its review of existing consent decrees and investigations of law enforcement – have been shrouded in secrecy. In general, the public has been kept in the dark as to crucial details about the government's work around police misconduct. For example, it is unclear what the current status is for the 18 open reform agreements, five open investigations, and one case in active litigation brought under Section 14141 managed by the Department of Justice's Civil Rights Division.[9] It is unclear whether the government plans to amend any of the 18 existing consent decrees that were already negotiated, agreed to, and approved by our courts. It is unclear how many police misconduct complaints the government has received since January and how many of those complaints have actually been investigated. It is unclear whether the government has sought the input of community organizations during its evaluation of existing consent decrees and other agreements that affect the civil rights and safety of the community. Finally, it is unclear when the government's internal review process around policing, initiated on March 31, 2017, will be completed, and when initial findings and a final report will be released to the public.

We are also disturbed by the government's recent announcement of changes to the Office of Community Oriented Policing Services (COPS) Collaborative Reform Initiative for Technical Assistance.[10] Collaborative reform is another valuable tool for addressing police misconduct and improving the relationships between local law enforcement and the communities they serve in the United States. According to the COPS Office, collaborative reform "improve[d] trust between police agencies and the communities they serve[d] by providing a means to organizational transformation around specific issues."[11] Collaborative reform has resulted in initial reports that covered a broad range of issues with

specific critiques and robust recommendations that usually span 132 pages (Fayetteville)[12] to 432 pages (San Francisco).[13] Until recently, the COPS Office was actively engaged in collaborative reform projects as described with over a dozen police departments across the country,[14] but recent changes to the program have shifted the focus from improving police-community relations to "fight[ing] violent crime."[15]

The decision to transform the purpose of the COPS program is yet another example of the government's recent series of decisions to abandon critical police accountability programs and withhold information from the public regarding its investigations into police misconduct. Of particular concern with this novel approach to the COPS program is the fact that the government has not released any progress reports for the Calexico Police Department (CA), the Fayetteville Police Department (NC), the Salinas Police Department (CA), the San Francisco Police Department (CA), or the St. Louis County Police Department (MO) since January. In addition, our government has not yet released any initial reports for the Chester Police Department (PA), the Commerce City Police Department (CO), the Fort Pierce Police Department (FL), the Memphis City Police Department (TN), the Milwaukee Police Department (WI), the North Charleston Police Department (SC), or the Saint Anthony Police Department (MN). It is our understanding that the initial reports for at least two of these police departments, Milwaukee and North Charleston, were close to being finalized in October, and yet they have not been released. It is also unclear whether the government will release the outstanding final or draft progress reports for the other jurisdictions, and whether they will release the draft initial reports for Chester, Commerce City, Fort Pierce, and Memphis. We have also requested clarification, to no avail, regarding when the government will provide details around the new scope and purpose of the collaborative reform program and what resources will be made available to law enforcement and local communities that solicit federal assistance in addressing police misconduct and advancing community policing.

Finally, over two years ago, Congress passed a law – the Deaths in Custody Reporting Act (DICRA) – requiring law enforcement agencies that receive federal funding to report deaths that occur in their custody to the federal government. Despite this clear mandate and the accompanying financial penalty for noncompliance, it is unclear whether any state or local law enforcement agencies have been held accountable for failing to collect and report deaths to the federal government. Our recommendation to encourage data collection more broadly and to condition federal criminal justice grants on data collection and reporting on police-community encounters has repeatedly been ignored. Ultimately, to achieve the complete and uniform data collection and reporting that is so desperately needed, the federal government must solicit disaggregated data that is reflective of all police community encounters, including those encounters with people of color, women, youth, and people with disabilities.

Because of recent actions taken by the government, including the several highlighted above, many people in the United States are concerned that the government has abdicated its responsibility to protect them from police misconduct and excessive force. It remains wholly unclear to what extent the government is affirmatively investigating and addressing allegations of police misconduct under Section 14141 and §§ 241 and §§ 242, or is even supporting its existing legal docket of cases alleging violations of these statutes. We are extremely concerned that the government is acting behind closed doors to dismantle carefully negotiated consent decrees, undermine pattern or practice investigations, and abandon valuable collaborative reform efforts launched through the COPS Office.

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To effectively and comprehensively address these issues and the challenges facing law enforcement in the 21st century, we must transform the way that law enforcement officers interact with the community. This includes rebuilding police-community trust and ensuring accountability for any officers or departments that engage in civil and human rights violations. This can be accomplished by:

- Training law enforcement officers on implicit bias, use of force, and de-escalation tactics;
- Replacing "broken windows" policing with the community policing model;
- De-militarizing the police force and preventing the deployment of military weapons against communities of color;
- Unequivocally and explicitly prohibiting racial profiling;
- Developing uniform accreditation procedures and standards for police departments nationwide;
- Increasing community oversight and federal oversight over local law enforcement through civilian review boards, criminal and civil rights investigations, and consent decrees; and
- Requiring law enforcement departments to collect and report data – disaggregated by race – on incidents of police use of force and other police-civilian encounters.

Since the advent of modern policing and for the past several decades, our laws have largely failed to ensure the justice that our Constitution professes to afford. Police brutality and discriminatory policing practices will continue to exist in the United States unless the federal government and Congress take stronger action to prevent them by implementing these recommendations. I applaud the Commission for holding this hearing on a matter of vital importance to our coalition. It is crucial that we continue to examine the challenges facing law enforcement in the 21st century, including an examination of the tension that has developed between law enforcement and communities of color, and advocate for transformative solutions that will promote lawful, fair, and effective police practices and accountability measures.

Thank you again for your consideration.

Sincerely,

Sincerely,

Vanita Gupta
President & CEO

[1] Cunningham, Terrence. "Statement by IACP President Terrence M. Cunningham on the Law Enforcement Profession and Historical Injustices." *IACP*. Oct. 17, 2016. http://www.theiacp.org/ViewResult?SearchID=2690.
[2] *See* "Fatal Force." *The Washington Post*. https://www.washingtonpost.com/graphics/national/police-shootings-2017/.
[3] *See* Buehler, James. "Racial/Ethnic Disparities in the Use of Lethal Force by US Police, 2010–2014." *American Journal of Public Health*. Jan. 11, 2017. http://ajph.aphapublications.org/doi/abs/10.2105/AJPH.2016.303575.
[4] *See* "Mapping Police Violence: Police Violence Map." *Mappingpoliceviolence.org*. https://mappingpoliceviolence.org. (finding that 99% of cases in 2015 have not resulted in any officer(s) being convicted of a crime) *See also* Stinson, Philip. "Op-Ed: Cops shoot and kill someone about 1,000 times a year. Few are prosecuted. What can be done?" Los Angeles Times. Dec. 15, 2016. http://scholarworks.bgsu.edu/cgi/viewcontent.cgi?article=1072&context=crim_just_pub (finding that "Since 2005, only 78 police officers across the country have been charged with murder or manslaughter resulting from an on-duty shooting")
[5] *See* Neuhauser, Alan. "Sessions Slams Baltimore Consent Decree." *U.S. News.* April 7, 2017. https://www.usnews.com/news/national-news/articles/2017-04-07/attorney-general-jeff-sessions-slams-baltimore-consent-decree.
[6] *See* Hinkel, Dan, et al. "Emanuel backs off from commitment to court oversight of Chicago police reform" *Chicago Tribune*. June 2, 2017. http://www.chicagotribune.com/news/local/breaking/ct-chicago-police-independent-monitor-met-20170602-story.html.
[7] *See* "Investigation of the Chicago Police Department." *United States Department of Justice*. Jan. 13, 2017. https://www.justice.gov/crt/case-document/file/925771/download. See also "Investigation of the Baltimore City Police Department." *United States Department of Justice*. Aug. 10, 2016. https://www.justice.gov/crt/file/883296/download.
[8] *See* Sessions, Jefferson B. "Memorandum for Heads of Department Components and United States Attorneys" United States Department of Justice. March 31, 2017. https://www.documentcloud.org/documents/3535148-Consentdecreebaltimore.html.
[9] *See* "The Civil Rights Division's Pattern and Practice Police Reform Work." *United States Department of Justice Civil Rights Division*. Jan. 2017. https://www.justice.gov/crt/file/922421/download
[10] *See* "Department of Justice Announces Changes to the Collaborative Reform Initiative." *United States Department of Justice*. Sept. 15, 2017. https://www.justice.gov/opa/pr/department-justice-announces-changes-collaborative-reform-initiative.
[11] "Collaborative Reform." *Community Oriented Policing Services*. Archived page from Sept. 11, 2017. https://web.archive.org/web/20170911082044/https:/cops.usdoj.gov/collaborativereform
[12] *See* Rodriguez, Denise, at el. "Collaborative Reform Initiative: Assessment Report on the Fayetteville Police Department." *Community Oriented Policing Services*. 2015. https://ric-zai-inc.com/Publications/cops-w0790-pub.pdf.
[13] *See* "Collaborative Reform Initiative: Assessment Report of the San Francisco Police Department." *Community Oriented Policing Services*. Oct. 2016. https://ric-zai-inc.com/Publications/cops-w0817-pub.pdf.
[14] *See* "Collaborative Reform." *Community Oriented Policing Services*. Archived page from Sept. 11, 2017. https://web.archive.org/web/20170911082044/https:/cops.usdoj.gov/collaborativereform.
[15] *See* "Department of Justice Announces Changes to the Collaborative Reform Initiative." *United States Department of Justice*. Sept. 15, 2017. https://www.justice.gov/opa/pr/department-justice-announces-changes-collaborative-reform-initiative.