

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

---

NAACP LEGAL DEFENSE &  
EDUCATIONAL FUND, INC.,

*Plaintiff,*

v.

WILLIAM P. BARR, et al.,

*Defendants.*

---

)  
)  
)  
)  
) Case No. 20-1132 (JDB)  
)  
)  
)  
)  
)

**BRIEF OF *AMICI CURIAE* CURRENT AND FORMER PROSECUTORS AND LAW  
ENFORCEMENT OFFICIALS AND LEADERS IN SUPPORT OF  
PLAINTIFF NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC.'S  
MOTION FOR SUMMARY JUDGMENT**

**TABLE OF CONTENTS**

STATEMENT OF INTEREST ..... 1

ARGUMENT ..... 2

    I.    Law Enforcement and Prosecutors Rely on Community Trust to Promote  
        Public Safety..... 4

    II.   Balanced Perspectives Are Critical to Reaching Informed and Well-Considered  
        Recommendations on Law Enforcement and the Administration of Justice..... 7

    III.  Transparency, Public Participation, and Balanced Perspectives Are Essential  
        to Building Community Trust and Ensuring the Legitimacy of  
        the Commission’s Recommendations ..... 13

    IV.  Complying with the Requirements of the Federal Advisory Committee Act  
        Would Not Impede the Commission’s Ability to Reach Informed and  
        Well-Considered Recommendations on Law Enforcement and  
        the Administration of Justice..... 16

CONCLUSION ..... 17

**TABLE OF AUTHORITIES**

**CASES**

*Nat’l Anti-Hunger Coal. v. Exec. Comm. of President’s Private Sector Survey on Cost Control*,  
711 F.2d 1071, n.1 (D.C. Cir. 1983)..... 8

*Union of Concerned Scientists v. Wheeler*,  
954 F.3d 11 (1st Cir. 2020) ..... 9

**STATUTES AND REGULATIONS**

41 C.F.R. § 102-3.150. .... 15

5a U.S.C. app. § 10. .... 15

5a U.S.C. app. § 2(a). .... 8

5a U.S.C. app. § 5(b) ..... 8

5a U.S.C. app. § 9(c). .... 15

**OTHER AUTHORITIES**

Attorney General William Barr, *Implementation Memorandum for Heads of Department Components*, Dep’t of Justice, January 21, 2020,  
<https://www.justice.gov/ag/page/file/1236906/download>..... 9, 12

*Attorney General William P. Barr Announces the Establishment of the Presidential Commission on Law Enforcement and the Administration of Justice*, Dep’t of Justice, Jan. 22, 2020,  
<https://www.justice.gov/opa/pr/attorney-general-william-p-barr-announces-establishment-presidential-commission-law> ..... 4

*Blueprint for Police Accountability and Reform, Fair & Just Prosecution*, 2020,  
<https://fairandjustprosecution.org/wp-content/uploads/2020/06/Policing-Roadmap-FINAL.pdf>. .... 1

*Building Community Trust: Key Principles and Promising Practices in Community Prosecution and Engagement, Fair and Just Prosecution*, Fair & Just Prosecution, 2018,  
[https://fairandjustprosecution.org/wp-content/uploads/2018/03/FJP\\_Brief\\_CommunityProsecution.pdf](https://fairandjustprosecution.org/wp-content/uploads/2018/03/FJP_Brief_CommunityProsecution.pdf). .... 5

E. Ann Carson, *Prisoners In 2018*, U.S. Dep’t of Justice, Bureau of Justice Statistics, at 9 (Table 5), Apr. 2020, <https://www.bjs.gov/content/pub/pdf/p18.pdf>. .... 5

*Hearing Before the S. Comm. on the Judiciary*, 114th Cong. 2 (2015) (statement of Tom Manger, Chief, Montgomery Cty., Md., Police Dep’t & President, Major Cities Chiefs Ass’n), <https://perma.cc/SKM2-QKV9>.....4

*Importance of Police-Community Relationships and Resources for Further Reading*, Dep’t of Justice, Comm. Relations Service, <https://www.justice.gov/crs/file/836486/download...10>

Katzenbach Commission, *The Challenge of Crime in a Free Society: A Report by the President’s Commission on Law Enforcement and Administration of Justice*, Feb. 1967, <https://www.ncjrs.gov/pdffiles1/nij/42.pdf> ..... 10

Open Letter, Major Cities Chiefs Association, June 1, 2020, [https://www.majorcitieschiefs.com/pdf/news/mcca\\_open\\_letter.pdf](https://www.majorcitieschiefs.com/pdf/news/mcca_open_letter.pdf)..... 13

Public Teleconference with President’s Task Force on 21st Century Policing, 80 Fed. Reg. 7498 (Feb. 10, 2015). ..... 16

President’s Task Force on 21st Century Policing, *Final Report of the President’s Task Force on 21st Century Policing*, Dep’t of Justice, Office of Community Oriented Policing Services, May 2015, [https://cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf). .....passim

Radley Balko, *There’s Overwhelming Evidence That the Criminal-justice System is Racist. Here’s the Proof.*, *Wash. Post*, June 10, 2020, <https://www.washingtonpost.com/graphics/2020/opinions/systemic-racism-police-evidence-criminal-justice-system/> .....6

*Remarks by President Trump at the International Association of Chiefs of Police Annual Conference and Exposition | Chicago, IL*, The White House, Oct. 28, 2019, <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-international-association-chiefs-police-annual-conference-exposition-chicago-il/> ..... 13

*Statement from Attorney General Barr on the Establishment of the Presidential Commission*, Dep’t of Justice Presidential Comm’n on Law Enforcement & the Admin. of Justice, Jan. 22, 2020, <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice> .....9, 12, 18

Sarah DeGue, et al., *Deaths Due to Use of Lethal Force by Law Enforcement*, *Am. J. of Preventive Medicine*, Nov. 1, 2016, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6080222/>..... 6

Transcript, *Hearing 6: Juvenile Justice*, Pres. Comm’n on Law Enforcement & the Admin. of Justice, May 7, 2020, <https://www.justice.gov/ag/page/file/1277641/download>..... 11

Transcript, *Hearing 8: Rural and Tribal Justice*, Pres. Comm’n on Law Enforcement & the Admin. of Justice, May 27, 2020, <https://www.justice.gov/ag/page/file/1284136/download> ..... 11

Transcript, *Hearing 9, Part 1: Civil Rights, Community Engagement, and Civilian Oversight*,  
Pres. Comm’n on Law Enforcement & the Admin. of Justice, May 28, 2020,  
<https://www.justice.gov/ag/page/file/1284141/download> ..... 11

Transcript, *Hearing 9, Part 2: Community Engagement*, Pres. Comm’n on Law Enforcement &  
the Admin. of Justice, June 9, 2020, <https://www.justice.gov/file/1285261/download>... 11

*Understanding Community Policing: A Framework for Action*, U.S. Dep’t of Justice Bureau of  
Justice Assistance, 18, Aug. 1994, <https://www.ncjrs.gov/pdffiles/commmp.pdf>..... 10

*Written Testimony from the Brennan Center for Justice to the President’s Commission on Law  
Enforcement and the Administration of Justice*, June 8, 2020,  
[https://www.brennancenter.org/sites/default/files/2020-  
06/Brennan%20Center%20Testimony%20Presidential%20Commission\\_1.pdf](https://www.brennancenter.org/sites/default/files/2020-06/Brennan%20Center%20Testimony%20Presidential%20Commission_1.pdf)..... 11

*Written Testimony of the American Civil Liberties Union Before the President’s Commission on  
Law Enforcement and the Administration of Justice*, May 27, 2020,  
[https://www.aclu.org/hearing-statement/written-testimony-american-civil-liberties-union-  
presidents-commission-law](https://www.aclu.org/hearing-statement/written-testimony-american-civil-liberties-union-presidents-commission-law) ..... 11

## STATEMENT OF INTEREST

Amici curiae are current and former elected or appointed chief prosecutors, law enforcement officials and leaders, as well as the National Organization of Black Law Enforcement Executives. They bring decades of experience in law enforcement, prosecution, and cooperative federal-state law enforcement activities.<sup>1</sup> They are intimately familiar with the challenges of performing critical law enforcement work, including in communities where residents are vulnerable to exploitation and crime, yet also distrust the police and the criminal justice system. Amici and their members represent jurisdictions from across the country and are deeply committed to the mission of promoting public safety.

Amici are well aware that the trust and cooperation of the community is an integral part of effective policing and prosecution. Yet the recent police killings of George Floyd, Breonna Taylor, and many others, highlight the deeply frayed relationships between law enforcement and the communities they serve, elevating the urgent need for structural reform of policing policies and a reset of the justice system.<sup>2</sup> These concerns are predicated on a long and troubling history of systemic racism and police brutality targeting communities of color.

Against this backdrop, a federal Commission empowered to review law enforcement practices and policies has a vital role to play in rebuilding community trust. It can influence the national conversation at a particularly urgent moment as hundreds of thousands of people across the country have taken to the streets to demand policing and justice reform. For the

---

<sup>1</sup> Amici confirm that no party's counsel authored this brief in whole or in part; no party or party's counsel contributed money that was intended to fund preparing or submitting the brief; and no person, other than amici, their members, or their counsel, contributed money that was intended to fund preparing or submitting the brief.

<sup>2</sup> For further discussion of what this sort of structural reform might look like, see *Blueprint for Police Accountability and Reform*, Fair & Just Prosecution, 2020, <https://fairandjustprosecution.org/wp-content/uploads/2020/06/Policing-Roadmap-FINAL.pdf>.

Commission's recommendations to be accepted as legitimate, however, it must operate in a manner that is transparent, accessible, and inclusive of all stakeholders and perspectives. Sadly, this is anything but the starting point of the President's Commission on Law Enforcement and the Administration of Justice.

Amici have a strong interest in this case given the timeliness and importance of any national effort to review policing and prosecution policies and recommend needed reforms. Trust won't be rebuilt, and the justice system won't regain legitimacy, if critical policing and prosecution policies are developed through a process that is not transparent, inclusive, and informed by a diverse set of viewpoints. Instead, this starting point will further erode confidence in the integrity of our justice system, leaving communities more at risk and undermining the well-being of individuals amici are, and have been, charged with protecting. A flawed process aimed at guiding the future of policing is the last thing a nation in crisis needs at this critical moment in time.

A full list of amici is attached as Exhibit A.

### **ARGUMENT**

Public safety is inextricably tied to public trust, which in turn is rooted in perceptions of justice and fairness. Where residents lack confidence in, or fear the consequences of turning to, the police, crimes go unreported and criminal investigations and prosecutions are less likely to be successful.

Community trust requires that people view the criminal justice system and its actors as legitimate. As the nationwide protests against systemic racism and police brutality amply demonstrate, law enforcement's legitimacy is dependent on valuing the dignity of all human life and a commitment to fair and equitable policing. Thoughtful government leadership can enhance

confidence by showing the public that their heartfelt concerns are being heard. Conversely, failing to respond meaningfully to the national outcry around the epidemic of systemic racism in the justice system will further erode public trust. Likewise, developing policy recommendations through a closed process that solicits only a handful of non-representative and homogeneous viewpoints will undermine confidence in the legitimacy of that process and the resulting recommendations.

The Presidential Commission on Law Enforcement and the Administration of Justice (“the Commission”), formed earlier this year and tasked with reporting on best practices for policing and law enforcement, could have served as a forum for thoughtful and informed deliberation on these critical issues. Instead, the structure, composition, and conduct of the Commission render it incapable of realizing this promise. Equally troubling is the Commission’s failure to comply with the Federal Advisory Committee Act (FACA), which requires federal committees to have a diverse and fairly balanced membership, hold open hearings, provide public access to the committee’s work, and seek public input and participation. The Commission has largely operated in secret, hidden from the public and the communities whose interests it purports to serve. Open hearings, transparent work, public participation, and the opportunity to provide input are necessary for the recommendations of the Commission to be accepted by the communities most impacted by law enforcement and criminal justice practices, especially in the context of the current crisis. These FACA requirements are also integral to the Commission’s ability to reach informed and well-considered recommendations that might gain public trust and confidence. Yet the Commission’s operation does not appear to have embraced these prerequisites. In contrast, the Task Force on 21st Century Policing, created by President Obama, acknowledged and abided by FACA requirements, and doing so in no way impeded its ability to



conduct business and make robust recommendations.<sup>3</sup> Our communities—and federal deliberations around vitally important issues that are at the forefront of a timely and deeply emotional national conversation—deserve more than what this unrepresentative Commission and its deeply flawed process seeks to provide.

## **I. Law Enforcement and Prosecutors Rely on Community Trust to Promote Public Safety**

In announcing the establishment of the Presidential Commission on Law Enforcement and the Administration of Justice, Attorney General Barr explained that a “free and safe society requires a trusted and capable police force.”<sup>4</sup> The Attorney General’s recognition of the importance of a “trusted” police force echoes recommendations made by President Obama’s Task Force on 21st Century Policing:

Building trust and nurturing legitimacy on both sides of the police-citizen divide is . . . the foundational principle underlying this inquiry into the nature of relations between law enforcement and the communities they serve.<sup>5</sup>

To combat crime, police officers “need the full cooperation of victims and witnesses.”<sup>6</sup> This common-sense approach to policing, sometimes called “community policing,” entails the partnering of local law enforcement organizations with communities to reduce crime and

---

<sup>3</sup> See generally President’s Task Force on 21st Century Policing, *Final Report of the President’s Task Force on 21st Century Policing*, Dep’t of Justice, Office of Community Oriented Policing Services, May 2015, [https://cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf).

<sup>4</sup> Attorney General William P. Barr Announces the Establishment of the Presidential Commission on Law Enforcement and the Administration of Justice, Dep’t of Justice, Jan. 22, 2020, <https://www.justice.gov/opa/pr/attorney-general-william-p-barr-announces-establishment-presidential-commission-law>.

<sup>5</sup> President’s Task Force on 21st Century Policing, *supra* n.3, at 9.

<sup>6</sup> *Hearing Before the S. Comm. on the Judiciary*, 114th Cong. 2 (2015) (statement of Tom Manger, Chief, Montgomery Cty., Md., Police Dep’t & President, Major Cities Chiefs Ass’n), <https://perma.cc/SKM2-QKV9>.

promote public safety. Community policing requires police to interact with their communities in a manner that builds trust and encourages cooperation, beginning by listening openly and honestly to the public they serve.

Similarly, prosecutors depend upon public trust to realize their mission of upholding justice and promoting public safety for all members of the community. Indeed, “trust between the community and the prosecutor’s office is essential to maintain the office’s legitimacy and credibility.”<sup>7</sup> Prosecutors who engage with their communities see enhanced public confidence in the criminal justice system, which in turn makes the public “more likely to report crimes and to cooperate as witnesses.”<sup>8</sup> In contrast, when the public does not trust law enforcement and prosecutors, community members may be less willing to report crimes, serve as witnesses, or testify in cases. This reluctance hampers prosecutors’ ability to seek justice and promote public safety.

Decades of police brutality and racially biased outcomes within the criminal justice system have eroded public trust in law enforcement, especially in Black communities and other communities of color. Racial disparities are deeply entrenched in our justice system. Across the United States, Black and Latino adults are approximately 5.6 and 2.5 times as likely to be incarcerated as white adults, respectively.<sup>9</sup> Black individuals are at least 2.8 times more likely to

---

<sup>7</sup> *Building Community Trust: Key Principles and Promising Practices in Community Prosecution and Engagement, Fair and Just Prosecution*, Fair & Just Prosecution, 2018, [https://fairandjustprosecution.org/wp-content/uploads/2018/03/FJP\\_Brief\\_CommunityProsecution.pdf](https://fairandjustprosecution.org/wp-content/uploads/2018/03/FJP_Brief_CommunityProsecution.pdf).

<sup>8</sup> *Id.*

<sup>9</sup> E. Ann Carson, *Prisoners In 2018*, U.S. Dep’t of Justice, Bureau of Justice Statistics, at 9 (Table 5), Apr. 2020, <https://www.bjs.gov/content/pub/pdf/p18.pdf>.

be killed by the police than their white counterparts.<sup>10</sup> Studies have shown historical and present day discrimination where children and adults of color are arrested more often and prosecuted more severely than whites for the same conduct.<sup>11</sup> In sum, for “too many poor citizens and people of color, arrest and imprisonment have become an inevitable and seemingly unavoidable part of the American experience.”<sup>12</sup>

The police killings of George Floyd and Breonna Taylor are sadly only the most recent examples of the brutality and inequality inherent in our criminal justice system, which have long plagued Black and Latino communities. Their deaths—and the racial inequities that remain persistent and rampant throughout each stage of the nation’s justice system—lay bare the unbroken link between slavery and modern racially-biased policing. Given the long-standing institutionalized racism woven into the fabric of our justice system, communities of color—particularly Black communities, who have frequently suffered at the hands of law enforcement officials and prosecutors—are less likely to trust the justice system than white communities.

Law enforcement must *earn* the public’s trust. Amici have been at the forefront of recognizing the need to acknowledge and address these entrenched racial inequities. They have worked with their communities to create a new vision for, and a fundamental shift in, the way our justice system promotes safer and healthier communities. Based on this experience, they

---

<sup>10</sup> Sarah DeGue, et al., *Deaths Due to Use of Lethal Force by Law Enforcement*, Am. J. of Preventive Medicine, Nov. 1, 2016, <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6080222/>.

<sup>11</sup> Radley Balko, *There’s Overwhelming Evidence That the Criminal-justice System is Racist. Here’s the Proof.*, Wash. Post, June 10, 2020, <https://www.washingtonpost.com/graphics/2020/opinions/systemic-racism-police-evidence-criminal-justice-system/>.

<sup>12</sup> President’s Task Force on 21st Century Policing, *supra* n.3, at 9 (quoting Bryan Stevenson, *Confronting Mass Imprisonment and Restoring Fairness to Collateral Review of Criminal Cases*, 41 Harvard Civ. Rts.-Civ. Liberties L. Rev. 339 (2006)).

know that it is possible to build and fortify public trust in law enforcement. But that is only possible when law enforcement officials pair their words with a meaningful commitment to learning from, and partnering with, the communities they serve.<sup>13</sup>

Central to effective policing and prosecution reform is the responsible use of discretion to reduce both crime and criminal prosecutions while still protecting public safety and holding people accountable, instead of resorting to a default punitive response in every instance and criminalizing individuals struggling with poverty, mental illness, and substance use challenges. A new generation of leaders across the country, including many of amici, are working to implement reforms that promote transparency and accountability, address racial injustice, and reduce the footprint of the criminal justice system. Amici recognize that building trust and enhancing legitimacy requires a justice system that partners with the community to advance evidence-based policies that prioritize community health and well-being.

## **II. Balanced Perspectives Are Critical to Reaching Informed and Well-Considered Recommendations on Law Enforcement and the Administration of Justice**

Given the importance of community trust and perceptions of legitimacy to effective policing and the administration of justice, it is critical that any national commission charged with making recommendations about reforms represent a diverse array of perspectives. Police and prosecutors are not the only stakeholders directly affected by the Commission's recommendations. A balanced commission should include stakeholders who have a variety of

---

<sup>13</sup> See, e.g., President's Task Force on 21st Century Policing, *supra* n.3, at 10 ("Research demonstrates that these principles lead to relationships in which the community trusts that officers are honest, unbiased, benevolent, and lawful. The community therefore feels obligated to follow the law and the dictates of legal authorities and is more willing to cooperate with and engage those authorities because it believes that it shares a common set of interests and values with the police.") (citing Tom Tyler, et al., *Procedural Justice and Cooperation*, Encyclopedia of Criminology & Crim. Just., 4011 (2014)).

experiences and perspectives, including stakeholders from outside the law enforcement community, such as civil rights groups, policing reform advocates, individuals with lived experience in the justice system, victims of crime, and other representatives of the public. It should also include criminal justice leaders and thinkers committed to moving away from punitive “tough on crime” approaches of the past that have disparately impacted communities of color. Unfortunately, the Commission as currently constructed by Attorney General Barr fails to represent any of these perspectives.

Soliciting and evaluating diverse perspectives are critical components of decision-making bodies and are key procedural requirements for federal advisory committees like the Commission. Indeed, the opening lines of the Federal Advisory Committee Act (FACA) identify diversity of opinion as a central, even definitional, function of an advisory committee: because advisory committees provide “expert advice, ideas, and diverse opinions to the Federal Government,”<sup>14</sup> FACA requires that they be “fairly balanced in terms of the points of view represented and the functions to be performed.”<sup>15</sup> Congress’ intent in drafting this provision was clear: including a diversity of opinions on an advisory committee “ensure[s] that persons or groups *directly affected* by the work of a particular advisory committee [will] have some representation on the committee.”<sup>16</sup> Crucially, a balanced committee provides independent

---

<sup>14</sup> 5a U.S.C. app. § 2(a).

<sup>15</sup> 5a U.S.C. app. § 5(b)(2); *see also Nat’l Anti-Hunger Coal. v. Exec. Comm. of President’s Private Sector Survey on Cost Control*, 711 F.2d 1071, 1073 n.1 (D.C. Cir. 1983) (holding that the “fairly balanced” requirement applies to all advisory committees).

<sup>16</sup> *See Nat’l Anti-Hunger Coal.*, 711 F.2d at 1074 n.2 (citation omitted) (emphasis added).

advice so that a committee’s recommendations are not “inappropriately influenced by the appointing authority or by any special interest.”<sup>17</sup>

Courts evaluating whether the membership of a committee is adequately balanced “consider the functions assigned to each individual committee in evaluating whether its balance is fair.”<sup>18</sup> Here, one of the core functions of the Commission is to strengthen the relationship between law enforcement and the public. The Commission’s objectives focus on the dynamic between the practices of policing and the communities law enforcement is tasked with serving and protecting.<sup>19</sup> To realize this goal, the Commission’s membership must represent *all* relevant perspectives, not just those of a select set of law enforcement and prosecutorial officials.

Indeed, Attorney General Barr, the Commission’s appointing authority, explicitly said at the Commission’s formation that “it is important that we hear from voices and consult perspectives outside of law enforcement” and that “[c]ivil rights organizations, civic leaders, defense bar associations, victims’ rights organizations, and community organizations, should and will help this important mission.”<sup>20</sup> He further stated that a “diversity of backgrounds and perspectives is important for gaining an effective understanding of these problems and formulating sound solutions.”<sup>21</sup>

---

<sup>17</sup> 5a U.S.C. app. § 5(b)(3).

<sup>18</sup> *Union of Concerned Scientists v. Wheeler*, 954 F.3d 11, 20 (1st Cir. 2020).

<sup>19</sup> See Attorney General William Barr, *Implementation Memorandum for Heads of Department Components*, Dep’t of Justice, January 21, 2020, at 2, <https://www.justice.gov/ag/page/file/1236906/download> [hereinafter Implementation Memo].

<sup>20</sup> *Statement from Attorney General Barr on the Establishment of the Presidential Commission*, Dep’t of Justice Presidential Comm’n on Law Enforcement & the Admin. of Justice, Jan. 22, 2020, <https://www.justice.gov/ag/presidential-commission-law-enforcement-and-administration-justice>.

<sup>21</sup> Implementation Memo, *supra* n.19, at 2.

But the membership of the Commission does not live up to the Attorney General’s rhetoric. Every member of the Commission is either a current or former law enforcement official, and all are current federal, state, or local government employees.<sup>22</sup> In light of the Commission’s assigned function and goals, balanced representation of those directly affected by the work of the Commission would include not only a cross-section of law enforcement representatives, but also the perspectives of civil rights groups, policing reform advocates, and others representing the general public that law enforcement serves, including those communities historically disproportionately impacted by policing enforcement and criminal justice practices. Instead, the current Commission reflects only the limited perspective of a subset of institutional law enforcement that has generally embraced a traditional enforcement-driven approach. This stands in contrast to nearly every other federal advisory committee that has focused on community-police engagement since 1967, which traditionally have included participation from members outside of law enforcement.<sup>23</sup> Much of the success of these groups’ recommendations can be attributed to their respective diverse memberships.<sup>24</sup>

---

<sup>22</sup> *See id.* at 3–4.

<sup>23</sup> *See, e.g.*, Katzenbach Commission, *The Challenge of Crime in a Free Society: A Report by the President’s Commission on Law Enforcement and Administration of Justice*, Feb. 1967, <https://www.ncjrs.gov/pdffiles1/nij/42.pdf> (listing the nineteen Commission members, who included educator Kingman Brewster, Jr. and activist Julia D. Stuart); *President’s Task Force on 21st Century Policing*, *supra* n.3, at v (listing nine members, including nonprofit director Bryan Stevenson and community organizer Jose Lopez); *see also* The President’s National Advisory Commission on Civil Disorders, 1967; The President’s National Advisory Commission on Criminal Justice Standards and Goals, 1971.

<sup>24</sup> *See Importance of Police-Community Relationships and Resources for Further Reading*, U.S. Dep’t of Justice, Comm. Relations Service, <https://www.justice.gov/crs/file/836486/download> (“Acknowledge and discuss with your communities the challenges you are facing”); *see also Understanding Community Policing: A Framework for Action*, U.S. Dep’t of Justice Bureau of Justice Assistance, 18, Aug. 1994, <https://www.ncjrs.gov/pdffiles/commmp.pdf> (“[C]ommunity involvement is essential for [police reforms’] success.”).

The broader efforts of the various working groups of the Commission do not appear to have rectified this deficiency in representation. While the Commission’s working groups claim to contain “subject matter experts across the federal and state government,” their members do not adequately reflect the diversity of this country or its criminal justice system. Of the over 100 working group members, the overwhelming majority are law enforcement officials, and few are from major cities. A majority of the witnesses also appear to have been law enforcement professionals. Civil rights experts, formerly incarcerated individuals, victims of police violence, researchers, and scholars are glaringly absent from the Commission and its working groups.<sup>25</sup>

---

<sup>25</sup> The Commission only recently invited input from select civil rights organizations and designated a single hearing late in its process—and after many groups had identified concerns with the Commission’s work and focus—to discuss community engagement. Yet the public nature of that meeting was not noticed in the Federal Register and was not widely publicized or known. See Transcript, *Hearing 9, Part 1: Civil Rights, Community Engagement, and Civilian Oversight*, Pres. Comm’n on Law Enforcement & the Admin. of Justice, May 28, 2020, <https://www.justice.gov/ag/page/file/1284141/download> (including testimony from representatives of the Voice of East African Women in Minnesota and the National Association of Civil Oversight of Law Enforcement); See Transcript, *Hearing 9, Part 2: Community Engagement*, Pres. Comm’n on Law Enforcement & the Admin. of Justice, June 9, 2020, <https://www.justice.gov/file/1285261/download> (noting additional testimony from witnesses on behalf of the Central Florida Urban League; the National Association of Criminal Defense Lawyers; and the Racial Equity Institute). See also Transcript, *Hearing 8: Rural and Tribal Justice*, Pres. Comm’n on Law Enforcement & the Admin. of Justice, May 27, 2020, <https://www.justice.gov/ag/page/file/1284136/download> (including testimony from representatives of the National Congress of American Indians, the Southwest Indigenous Women’s Coalition, and the Association of Village Council Presidents). See also Transcript, *Hearing 6: Juvenile Justice*, Pres. Comm’n on Law Enforcement & the Admin. of Justice, May 7, 2020, <https://www.justice.gov/ag/page/file/1277641/download> (including testimony from representatives of the Big Brothers Big Sisters of America and The Boys and Girls Club of America); *Written Testimony of the American Civil Liberties Union Before the President’s Commission on Law Enforcement and the Administration of Justice*, May 27, 2020, <https://www.aclu.org/hearing-statement/written-testimony-american-civil-liberties-union-presidents-commission-law>; *Written Testimony from the Brennan Center for Justice to the President’s Commission on Law Enforcement and the Administration of Justice*, June 8, 2020, [https://www.brennancenter.org/sites/default/files/2020-06/Brennan%20Center%20Testimony%20Presidential%20Commission\\_1.pdf](https://www.brennancenter.org/sites/default/files/2020-06/Brennan%20Center%20Testimony%20Presidential%20Commission_1.pdf).



The absence of these perspectives in the makeup of the Commission and its working groups has undermined its ability to reach informed and well-considered recommendations regarding policing and the administration of justice, and rightfully calls into question whether it has the appropriate makeup to advise on the future of law enforcement across America. To be effective, policy recommendations on policing and the administration of justice must incorporate and be responsive to perspectives of all of these stakeholders. Instead, the Commission's makeup and the absence of relevant stakeholders has impeded the Commission's ability to reach sound conclusions based on diverse perspectives, thereby necessarily undermining public trust in the resulting end product and recommendations.

The Commission was asked to "study crime...and how we can restore the public confidence in law enforcement to its rightful place."<sup>26</sup> These are undoubtedly important objectives. Yet instead of acknowledging tensions and the erosion of trust in law enforcement within communities of color, the "Respect for Law Enforcement" working group was charged only with examining the impact of "under-enforcement of the criminal law in certain jurisdictions."<sup>27</sup> This directive lacks any recognition of concerns around over-enforcement in certain communities, and in particular communities of color. Also entirely absent from any of the working groups' directives is any mention of constitutional or civil rights, police accountability, or racial disparities.

These omissions will undoubtedly be viewed as an intentional choice to drive a preordained agenda, rather than to embrace an open and thoughtful process that is responsive to

---

<sup>26</sup> *Statement from Attorney General Barr on the Establishment of the Presidential Commission*, *supra* n.20.

<sup>27</sup> *See* Implementation Memo, *supra* n.19, at 5.

both the current unrest and the calls for reform coming from across the country and around the globe. Indeed, President Trump’s own remarks— the Commissioners will “have [the recommendations] soon because most of them know many of the answers before they begin”<sup>28</sup>— suggests that the recommendations have already been decided and that the fact-finding process is merely for show.

### **III. Transparency, Public Participation, and Balanced Perspectives Are Essential to Building Community Trust and Ensuring the Legitimacy of the Commission’s Recommendations**

Public confidence must be earned through a demonstrated openness to hearing difficult and challenging perspectives from those with different views, thorough and thoughtful deliberations, and a clear commitment to responding to the community’s concerns. As the Major Cities Chiefs Association explained in a recent open letter in response to George Floyd’s death:

As leaders of the largest local law enforcement organizations in the United States and Canada, we must be honest about our history and ask ourselves tough questions before we are able to offer the right answers. A history dating back over two centuries that has included institutional racism and more recently, a history that during the civil rights movement over 50 years ago, included injustices and police brutality against African Americans who were fighting for equal rights and equal protections . . . More than anything, this is a time for us to help facilitate healing, learning, listening and then dialogue, particularly in communities of color.<sup>29</sup>

Unfortunately, the Commission and its working groups have not solicited meaningful or adequate input from communities directly impacted by unconstitutional policing, criminal justice

---

<sup>28</sup> *Remarks by President Trump at the International Association of Chiefs of Police Annual Conference and Exposition | Chicago, IL*, The White House, Oct. 28, 2019, <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-international-association-chiefs-police-annual-conference-exposition-chicago-il/> (emphasis added).

<sup>29</sup> *Open Letter*, Major Cities Chiefs Association, June 1, 2020, [https://www.majorcitieschiefs.com/pdf/news/mcca\\_open\\_letter.pdf](https://www.majorcitieschiefs.com/pdf/news/mcca_open_letter.pdf).

reform advocates, academics who study the effects of mass incarceration and police violence on public health, civil rights leaders, or the families of individuals killed by police officers.<sup>30</sup> Nor has the Commission taken up issues of racial disparities in the criminal justice system, including over-policing and over-surveillance of communities of color—at least not publicly.

The Commission's failure to consider the outcry from communities across the country demanding long-overdue reforms hinders its ability to fortify public trust and confidence in the recommendations and operation of the Commission. While every state in the country is seeing protests against police violence and systemic racism, the Commission's refusal to invite leaders on these issues to join its membership or to meaningfully involve them in its deliberations is a glaring omission.

These deficiencies are compounded by the Commission's opaque operations. The Commission does not have deliberations in open meetings, nor has it disclosed any working papers. This lack of transparency undermines public confidence in both the process and substance of the Commission's work. It casts doubt on the inclusion of all perspectives and on the motives underlying the Commission's focus and agenda. Transparency is necessary to ensure the public's confidence that the Commission's recommendations were the informed and well-considered result of a good faith process to weigh the interests and needs of all stakeholders. And a public and open discussion of issues around police accountability, transparency, and reform are especially important in the current context of nationwide protests over police brutality and concerns about deficient responses of federal leaders to the many thousands of voices calling for change.

---

<sup>30</sup> As discussed above, after many groups identified their concerns with the Commission's focus and process, and after the Plaintiff initiated this lawsuit, the Commission invited limited testimony from select civil rights organizations and leaders. *See supra* n.25.

Instead, this Commission is operating in a manner that is anything but open. It did not publish any notices of its many hearings in the Federal Register. This has ensured that any robust dialogue around the perspectives of amici and other stakeholders is absent from the Commission's deliberations. The Commission likewise has not publicized a "Designated Federal Officer" before its meetings,<sup>31</sup> leaving the public, leaders such as amici, Congresspeople, and journalists with questions for the Commission without any clear point of contact. Since the Commission also did not file a charter as required by FACA,<sup>32</sup> the public is unable to fully understand and evaluate the Commission's operations, objectives, scope of activity and perspectives, and costs. And most importantly, the Commission has not held its meetings and hearings in the open with advanced public notice, permitting interested persons to attend and appear before or provide input to the Commission, or made its working papers available for public inspection, all of which are required by section 10 of FACA.<sup>33</sup>

Complying with the requirements of FACA would have demonstrated the Commission's commitment to "restore the public confidence in law enforcement" and instilled some legitimacy in the work of the Commission. Similarly, compliance would have helped to ensure that the resulting recommendations would reflect diverse viewpoints and assure community members that their voices were heard and considered. Instead, producing recommendations on policing and law enforcement through such an incomplete and opaque process—in violation of FACA—risks further exacerbating the already heightened distrust in law enforcement.

---

<sup>31</sup> See 41 C.F.R. § 102-3.150.

<sup>32</sup> 5a U.S.C. app. § 9(c).

<sup>33</sup> 5a U.S.C. app. § 10.

**IV. Complying with the Requirements of the Federal Advisory Committee Act Would Not Impede the Commission’s Ability to Reach Informed and Well-Considered Recommendations on Law Enforcement and the Administration of Justice**

There is no reason to believe complying with FACA requirements would have inhibited the Commission’s work. Indeed, the final report of the President’s Task Force on 21st Century Policing in 2015 demonstrates that a commission on this subject matter can function successfully and effectively while complying with FACA.

The 2015 Task Force operated openly: it posted public notices of its meetings, and requested “written comments including proposed recommendations from individuals, groups, advocacy organizations, and professional communities.”<sup>34</sup> Additionally, the Department of Justice posted the agenda for each teleconference in advance of its date on the Task Force website. These steps did not impede the Task Force, but rather increased accountability to the public and enabled it to consider diverse perspectives, which informed and enhanced the Task Force’s decision-making. The Task Force’s final report noted that “the information collected in these meetings informed and advised the task force in developing its recommendations.”<sup>35</sup>

The 2015 Task Force included police officers, criminal justice reform organizers, civil rights organizers, mayors, and academics in the fields of law, criminology, and education.<sup>36</sup> Meaningfully including these broader community perspectives served the Task Force’s objectives of developing approaches that would build community trust in law enforcement and the justice system. By representing viewpoints from members with experience in law

---

<sup>34</sup> Public Teleconference with President’s Task Force on 21st Century Policing, 80 Fed. Reg. 7498 (Feb. 10, 2015).

<sup>35</sup> President’s Task Force on the 21st Century Policing, *supra* n.3, at 71.

<sup>36</sup> *See id.* at 71–74.

enforcement alongside those with expertise in civil rights, civil liberties, and community activism, the Task Force was able to create a well-informed report of the challenges to policing and successfully complete its work, recommending strategies to balance and advance both “promot[ing] effective crime reduction” and “building public trust.”<sup>37</sup>

The 2015 Task Force’s compliance with FACA requirements bolstered its ability to create informed and nuanced recommendations on policing and criminal justice. Likewise, including varied perspectives in the Presidential Commission on Law Enforcement and the Administration of Justice’s deliberations is essential, and particularly important against the current backdrop of protests across the country—and indeed the globe—demanding reform of a broken justice system embedded with racial inequities, bias, and an alarming lack of meaningful reform.

### **CONCLUSION**

The Presidential Commission on Law Enforcement and the Administration of Justice was established to study and provide recommendations on policing, law enforcement, and effective criminal justice practices and policies—and is considering these issues at a particularly fragile and critical time for our nation. The protests and movement for reform across the country in response to the police killings of George Floyd and Breonna Taylor elevate and highlight the importance of this work, and underscore the need for a Commission that is constituted and operates in a manner the public can perceive as fair, balanced, inclusive, and just.

As current and former prosecutors and law enforcement leaders and officials, amici know how important community trust is to effective law enforcement and public safety—and conversely, how a lack of community trust can hamper the ability of law enforcement to keep

---

<sup>37</sup> *Id.* at 1.

our communities safe. Sadly, the Commission’s failure to comply with FACA renders it incapable of realizing its stated goal of “restor[ing] the public confidence in law enforcement.”<sup>38</sup> And in this moment of crisis, this failing is that much more disturbing and disheartening.

Dated: June 18, 2020

Respectfully submitted,

/s/ John E. Bies

John E. Bies

D.C. Bar No. 483730

Khahilia Y. Shaw

D.C. Bar No. 1616974

Megan C. Field\*

VA Bar No. 94749

*\*Application to the D.C. Bar Pending*

AMERICAN OVERSIGHT

1030 15th Street NW, B255

Washington, DC 20005

(202) 869-5246

john.bies@americanoversight.org

khahilia.shaw@americanoversight.org

megan.field@americanoversight.org

*Counsel for Amici Curiae*

---

<sup>38</sup> *Statement from Attorney General Barr on the Establishment of the Presidential Commission, supra* n.20.

## **Exhibit A**



**List of Signatories**

**National Organization of Black Law Enforcement Executives**

**Roy L. Austin, Jr.**

Former Deputy Assistant to the President, Office of Urban Affairs, Justice, and Opportunity  
Former Deputy Assistant Attorney General, Civil Rights Division, U.S. Department of Justice  
Former Assistant U.S. Attorney, District of Columbia

**Aramis Ayala**

State Attorney, Ninth Judicial Circuit, Florida

**Diana Becton**

District Attorney, Contra Costa County, California

**Wesley Bell**

Prosecuting Attorney, St. Louis County, Missouri

**Buta Biberaj**

Commonwealth's Attorney, Loudoun County, Virginia

**Sherry Boston**

District Attorney, DeKalb County, Georgia

**Chesa Boudin**

District Attorney, City and County of San Francisco, California

**RaShall M. Brackney**

Chief, Charlottesville Police Department, Virginia

**Joseph Brann**

Former Director, Office of Community Oriented Policing Services, U.S. Department of Justice  
Former Chief, Hayward Police Department, California

**Aisha Braveboy**

State's Attorney, Prince George's County, Maryland

**Chris Burbank**

Vice President, Law Enforcement Strategy, Center for Policing Equity  
Former Chief, Salt Lake City Police Department, Utah

**A. Bates Butler III**

Former U.S. Attorney for the District of Arizona

**John T. Chisholm**

District Attorney, Milwaukee County, Wisconsin

**Jerry L. Clayton**

Sheriff, Washtenaw County, Michigan

**Dave Clegg**

District Attorney, Ulster County, New York

**Shameca Collins**

District Attorney, Sixth Judicial District, Mississippi

**Scott Colom**

District Attorney, Sixteenth Judicial District, Mississippi

**Brendan Cox**

Former Chief, Albany Police Department, New York

**John Creuzot**

District Attorney, Dallas County, Texas

**Satana Deberry**

District Attorney, Durham County, North Carolina

**Parisa Dehghani-Tafti**

Commonwealth's Attorney, Arlington County and the City of Falls Church, Virginia

**Brandon del Pozo**

Former Chief, Burlington Police Department, Vermont

**Steve Descano**

Commonwealth's Attorney, Fairfax County, Virginia

**Thomas J. Donovan, Jr.**

Attorney General, State of Vermont

**Michael Dougherty**

District Attorney, Twentieth Judicial District, Colorado

**Keith Ellison**

Attorney General, State of Minnesota

**Aaron Ford**

Attorney General, State of Nevada

**Kimberly M. Foxx**

State's Attorney, Cook County, Illinois

**Kimberly Gardner**

Circuit Attorney, City of St. Louis, Missouri

**Stanley Garnett**

Former District Attorney, Twentieth Judicial District, Colorado

**George Gascón**

Former District Attorney, City and County of San Francisco, California

Former Chief, San Francisco Police Department, California

Former Chief, Mesa Police Department, Arizona

**Sarah F. George**

State's Attorney, Chittenden County, Vermont

**Sim Gill**

District Attorney, Salt Lake County, Utah

**Joe Gonzales**

District Attorney, Bexar County, Texas

**Eric Gonzalez**

District Attorney, Kings County, New York

**Mark Gonzalez**

District Attorney, Nueces County, Texas

**Christian Gossett**

District Attorney, Winnebago County, Wisconsin

**Andrea Harrington**

District Attorney, Berkshire County, Massachusetts

**James Hingeley**

Commonwealth's Attorney, Albemarle County, Virginia

**Robert J. Hoffman**

Former Chief, Plainfield Police Department, Connecticut

**John Hummel**

District Attorney, Deschutes County, Oregon

**Natasha Irving**

District Attorney, Sixth Prosecutorial District, Maine

**Michael Jackson**

District Attorney, Dallas County, Alabama

**Kathleen Jennings**

Attorney General, State of Delaware

**Melinda Katz**

District Attorney, Queens County, New York

**Justin F. Kollar**

Prosecuting Attorney, Kaua'i County, Hawaii

**Lawrence S. Krasner**

District Attorney, Philadelphia, Pennsylvania

**William Lansdowne**

Former Chief, San Diego Police Department, California

Former Chief, San Jose Police Department, California

Former Chief, Richmond Police Department, California

**Beth McCann**

District Attorney, Second Judicial District, Colorado

**Brian Middleton**

District Attorney, Fort Bend County, Texas

**Stephanie Morales**

Commonwealth's Attorney, Portsmouth, Virginia

**J. Tom Morgan**

Former District Attorney, DeKalb County, Georgia

**Marilyn J. Mosby**

State's Attorney, Baltimore City, Maryland

**Jody Owens**

District Attorney, Hinds County, Mississippi

**Jim Petro**

Former Attorney General, State of Ohio

**Abdul Pridgen**

Chief, Seaside Police Department, California

**Karl Racine**

Attorney General, District of Columbia

**Ira Reiner**

Former District Attorney, Los Angeles County, California  
Former City Attorney, Los Angeles, California

**Robert J. Reyes**

Former Chief, U.S. Department of Veterans' Affairs Police Department

**Rachael Rollins**

District Attorney, Suffolk County, Massachusetts

**Jeff Rosen**

District Attorney, Santa Clara County, California

**Marian Ryan**

District Attorney, Middlesex County, Massachusetts

**Tori Verber Salazar**

District Attorney, San Joaquin County, California

**Daniel Satterberg**

Prosecuting Attorney, King County, Washington

**Daniella M. Shorter**

District Attorney, Twenty-Second Judicial District, Mississippi

**Carol Siemon**

Prosecuting Attorney, Ingham County, Michigan

**Norm Stamper**

Former Chief, Seattle Police Department, Washington

**Darrel Stephens**

Former Chief, Charlotte-Mecklenburg Police Department, North Carolina

**David E. Sullivan**

District Attorney, Northwestern District, Massachusetts

**Steven Tompkins**

Sheriff, Suffolk County, Massachusetts

**Raúl Torrez**

District Attorney, Bernalillo County, New Mexico

**Peter Volkmann**

Police Commissioner, City of Hudson, New York

**Mike Ward**

Former Chief, Alexandria Police Department, Kentucky

**Lynneice Washington**

District Attorney, Jefferson County, Bessemer Division, Alabama

**Seth Waxman**

Former Solicitor General of the United States, U.S. Department of Justice