



U.S. Commission on Civil Rights Unanimously Condemns the Killings of Ahmaud Arbery, Breonna Taylor, and George Floyd and Calls on the Department of Justice to Enforce Federal Civil Rights Laws that Protect Americans from Unconstitutional Policing Practices

June 5, 2020

The U.S. Commission on Civil Rights unanimously urges vigorous federal enforcement of civil rights laws that protect Americans from unconstitutional policing practices. Several uses of deadly force against African-American civilians in recent weeks underscore how essential such enforcement is to protect civil rights, yet in the current Administration the U.S. Department of Justice has taken the public position to significantly curtail policing investigations,¹ and followed through in that reduction.² The Commission acknowledges the Department of Justice (DOJ) decision to initiate a criminal investigation into the death of George Floyd in Minneapolis, Minnesota,³ a use of deadly force that has been widely criticized by law enforcement leaders themselves,⁴ but urges DOJ to take steps necessary to build public trust in a federal commitment to constitutional policing practices and to ensuring nondiscrimination in police uses of force. Specific to recent incidents, the Commission urges that DOJ immediately initiate a pattern or practice investigation of any unconstitutional conduct by the Minneapolis Police Department. The Commission also calls upon the DOJ to exercise its authority and engage in a pattern or practice review of state and local authorities and their

¹ Office of the Att’y Gen., “Memorandum for Heads of Department Components and United States Attorneys,” March 31, 2017, <https://www.documentcloud.org/documents/3535148-Consentdecreebaltimore.html> (stating that “It is not the responsibility of the federal government to manage non-federal law enforcement agencies”); *see also* U.S. Commission on Civil Rights, *Police Use of Force: An Examination of Modern Policing Practices* (2018), <https://www.usccr.gov/pubs/2018/11-15-Police-Force.pdf>, at 88-90 (Commissioner Adegbile was recused from the issuance of the report); U.S. Commission on Civil Rights, “U.S. Commission on Civil Rights Urges Department of Justice to Use All Available Tools to Work with Police Departments to Ensure Constitutional Policing,” Apr. 24, 2017, https://www.usccr.gov/press/2017/Statement_04-24-2017-Policing.pdf.

² U.S. Commission on Civil Rights, *Are Rights A Reality? Evaluating Federal Civil Rights Enforcement* (2019), <https://www.usccr.gov/pubs/2019/11-21-Are-Rights-a-Reality.pdf> at 119.

³ U.S. Department of Justice, “Joint Statement of United States Attorney Erica MacDonald and FBI Special Agent in Charge Rainer Drolshagen,” May 28, 2020, <https://www.justice.gov/usao-mn/pr/joint-statement-united-states-attorney-erica-macdonald-and-fbi-special-agent-charge>.

⁴ Christina Maxouris, *Minneapolis police chief says all four officers involved in George Floyd’s death bear responsibility*, CNN (Jun. 1, 2020, 5:25 AM), <https://www.cnn.com/2020/06/01/us/minneapolis-police-chief-floyd-response/index.html>; *see also*, Phil Helsel, *Police chiefs across U.S. condemn officers in Floyd death*, NBC News (May 29, 2020, 12:14 PM), <https://www.nbcnews.com/news/us-news/several-police-heads-across-nation-condemn-force-used-floyd-death-n1217451>.

prosecution practices given the circumstances surrounding the investigation and belated decisions to prosecute the killing of Ahmaud Arbery in Brunswick, Georgia.

Additionally, the Commission asks the DOJ to initiate an investigation into the killing of Breonna Taylor, in Louisville, Kentucky to determine whether her death was part of a pattern or practice of unconstitutional conduct by Louisville Metro Police Department.⁵ More broadly, the Commission urges DOJ to return to use of all the tools Congress has afforded it to protect the civil rights of all Americans who come in contact with public safety officers.

Three tragic cases in close succession involving the killing of unarmed individuals, including in one case killing a woman in her own home, underscore the need for federal vigilance and involvement. On February 11, 2020, Ahmaud Arbery, a 25-year-old African-American man, was tracked and shot to death while jogging in a suburban neighborhood near his home in South Georgia.⁶ Arbery was killed after two men, Gregory McMichael, a former county police officer and investigator with the local district attorney's office, and his son, Travis McMichael, allegedly tracked down Arbery while he was out jogging.⁷ The pair were armed and Arbery was shot in the chest three times by Travis McMichael after a struggle over the latter's shotgun.⁸ Despite the killing occurring in February, no arrests were made until May 7, two days after a video of the killing appeared online.⁹ Georgia's Attorney General has asked for the DOJ to review the state and local handling of their investigations in the case.¹⁰ Attorneys for Arbery's family have said that the U.S. Attorney's Office for the Southern District of Georgia is launching an investigation into Arbery's murder as a hate crime.¹¹

Another individual, Breonna Taylor, a 26-year-old black woman, was killed in her apartment in Louisville, Kentucky, on March 13, 2020, after Louisville police officers entered her apartment unannounced while executing a "no-knock" search warrant in a narcotics investigation.¹² Taylor's boyfriend, who was present at the apartment and was

⁵ Members of the House Judiciary Committee sent a letter to the Department of Justice on May 28, 2020, similarly requesting pattern or practice investigations into the killings and prosecutions of Arbery, Taylor, and Floyd. Letter from Chairman Jerrold Nadler and other Members of the House Judiciary Committee to Attorney General Barr and Assistant Attorney General Eric Dreiband, dated May 28, 2020, https://judiciary.house.gov/uploadedfiles/2020-05-28_letter_to_ag_barr_and_aag_dreiband_in_response_to_recent_murders_of_ahmaud_arbery_breonna_taylor_george_floyd.pdf?utm_campaign=2826-519.

⁶ Richard Fausset, *What We Know About the Shooting Death of Ahmaud Arbery*, The New York Times (May 22, 2020), <https://www.nytimes.com/article/ahmaud-arbery-shooting-georgia.html>.

⁷ Angela Barajas and Martin Savidge, *Ahmaud Arbery killing being investigated as federal hate crime, family attorney says*, CNN (May 26, 2020, 12:26 p.m.), <https://www.cnn.com/2020/05/25/us/ahmaud-arbery-doj-hate-crime-investigation/index.html>.

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ *Justice Department launching investigation into Ahmaud Arbery's death as a hate crime, family's attorneys say*, CBS NEWS (May 26, 2020, 7:38 am), <https://www.cbsnews.com/news/ahmaud-arbery-killing-hate-crime-justice-department-investigation/>.

¹² Errin Haines, *Family seeks answers in fatal police shooting of Louisville woman in her apartment*, The Washington Post (May 11, 2020, 10:07 p.m.),

licensed to carry a gun, allegedly shot at the armed intruders. Police officers then began shooting, resulting in Taylor being shot eight times.¹³ The F.B.I has opened an investigation into the shooting, and Louisville Metro Police Department has announced that it will now require all sworn officers to wear body cameras.¹⁴

On Memorial Day, May 25, 2020, George Floyd, a 46-year-old black man, was killed in Minneapolis, Minnesota, after being handcuffed and pinned to the ground by three officers, with one police officer's knee on his neck.¹⁵ Video recorded at the scene as well as the criminal complaint filed by the Hennepin County District Attorney suggest that the officer's knee remained on Mr. Floyd's neck in excess of eight minutes while Mr. Floyd repeatedly said "I can't breathe."¹⁶ Bystanders verbally expressed concern to the officers about Mr. Floyd's well-being.¹⁷ Following the release of the video, four of the officers present and involved were fired by the Police Chief,¹⁸ and have since been arrested and charged, one with second degree murder, and three with aiding and abetting second degree murder.¹⁹ The F.B.I. has also begun conducting a federal civil rights investigation into the killing.²⁰

The U.S. Attorney General is authorized under the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141,²¹ to "investigate and litigate cases involving a 'pattern or practice of conduct by law enforcement officer' that violates Constitutional or federal rights".²² These pattern or practice investigations begin with the Civil Rights Division conducting a formal investigation into a law enforcement agency, most often involving a systemic analysis of the policies and practices of policing in a particular community to determine if there are constitutional violations.²³ After making its findings and conclusions, the Division can negotiate reforms, sometimes in the form of a

<https://www.washingtonpost.com/nation/2020/05/11/family-seeks-answers-fatal-police-shooting-louisville-woman-her-apartment/>.

¹³ Kay Jones, Carma Hassan, & Leah Asmelash, *A Kentucky EMT was shot and killed during a police raid of her home. The family is suing for wrongful death*, CNN (May 13, 2020, 5:26 PM), <https://www.cnn.com/2020/05/13/us/louisville-police-emt-killed-trnd/index.html>.

¹⁴ Scottie Andrew, *The FBI has opened an investigation into the shooting death of Kentucky EMT Breonna Taylor*, CNN (May 21, 2020, 5:28 PM), <https://www.cnn.com/2020/05/21/us/breonna-taylor-death-police-changes-trnd/index.html>.

¹⁵ *What We Know About the Death of George Floyd in Minneapolis*, The New York Times (May 28, 2020, 3:09 p.m.), <https://www.nytimes.com/2020/05/27/us/george-floyd-minneapolis-death.html>.

¹⁶ Complaint at 2-3, *State v. Chauvin*, No. 27-CR-20-12646 (4th Judicial District, Minn. filed May 29, 2020).

¹⁷ *Id.*; see also *What We Know About the Death of George Floyd in Minneapolis*.

¹⁸ *What We Know About the Death of George Floyd in Minneapolis*.

¹⁹ Brittany Shammas, Kim Bellware, and Brady Dennis, *Murder charges filed against all 4 officers in George Floyd's death as protests against biased policing continue*, The Washington Post (Jun. 3, 2020, 11:45 p.m.), <https://www.washingtonpost.com/nation/2020/06/03/george-floyd-police-officers-charges/>.

²⁰ *Id.*

²¹ Recodified as 34 U.S.C. § 12601.

²² Civil Rights Division, U.S. Department of Justice, *The Civil Rights Division's Pattern and Practice Police Reform Work: 1994-Present*, 3 (2017).

²³ *Id.* at 1.

consent decree, overseen by a federal court and an independent monitor.²⁴ In 2018, the Commission published a report on police use of force, and discussed the positive results of many of these decrees, noting that jurisdictions with some form of federal oversight saw decreases in shootings, at a rate of twenty-seven percent the first year and up to thirty-five percent in following years.²⁵ The report also noted a decrease in reports of non-lethal police uses of force,²⁶ and police use of force citizen complaints.²⁷

Since 1994, DOJ has opened seventy pattern or practice investigations, of which, forty-one resulted in a consent decree or other settlement agreement.²⁸ Nineteen of these decrees were still actively being implemented as of April 2017.²⁹ Under this Administration, the DOJ has abandoned pattern or practice investigations, criticized pattern or practice policing investigations as a tool, refused to initiate new investigations, and curtailed the use of consent decrees.³⁰ They have also diminished the use of the DOJ Office of Community Oriented Policing (COPS) to assist local police departments in developing new methods and policies for training officers and carrying out their duties in a fair, safe, and constitutional manner.³¹ Despite the stark deficit of comprehensive national data on police use of force, DOJ has not been able to compile the complete data it would need to track police use of force nationwide.³² Congress has not conditioned any federal funding on the collection of this data to incentivize police departments to provide it to DOJ.³³

The Federal government, along with the DOJ, has a duty and a responsibility to uphold the Constitution and federal law, and to ensure it is upheld in the states. As most police leaders recognize, fostering community trust, positive community relations and cooperation are essential for law enforcement to effectively discharge its public safety duty. The Commission once again urges the DOJ to use the full measure of its authority to conduct investigations into these cases, and to bring enforcement actions if

²⁴ Id.

²⁵ Police Use of Force: An Examination of Modern Policing Practices at 88-89.

²⁶ Id. at 92.

²⁷ Id. at 75.

²⁸ Ed Chung, *The Trump Administration Is Putting DOJ Policing Reform Efforts At Risk*, Center for American Progress (Apr. 13, 2017, 9:00 am), <https://www.americanprogress.org/issues/criminal-justice/news/2017/04/13/430461/trump-administration-putting-doj-policing-reform-efforts-risk/>.

²⁹ Id.

³⁰ Memorandum from the Att’y Gen. to Heads of Civ. Litigating Components and United States Att’y (Nov. 7, 2018) (on file with the Commission); *see also* Police Use of Force: An Examination of Modern Policing Practices at 88.

³¹ *See* Alan Neuhauser, *Justice Department Ends COPS Office Review of Police*, U.S. News and World Report (Sept. 15, 2017), <https://www.usnews.com/news/national-news/articles/2017-09-15/justice-department-ends-cops-office-review-of-local-police>. The Trump administration has also repeatedly called for the elimination of the COPS office, most recently in its FY 2021 President’s Budget.

<https://judiciary.house.gov/news/documentsingle.aspx?DocumentID=2804>

³² Police Use of Force: An Examination of Modern Policing Practices at 12-20.

³³ The Commission recommended Congress enact this reform in our 2018 report. Id. at 139.

appropriate to prevent these events and other systemic deprivations of constitutional rights from occurring.³⁴

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The U.S. Commission on Civil Rights, established by the Civil Rights Act of 1957, is the only independent, bipartisan agency charged with advising the President and Congress on civil rights and reporting annually on federal civil rights enforcement. Our 51 state Advisory Committees offer a broad perspective on civil rights concerns at state and local levels. The Commission: in our 7th decade, a continuing legacy of influence in civil rights.

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³⁴ See *Police Use of Force: An Examination of Modern Policing Practices* at 139 (recommending that the Department of Justice “return to vigorous enforcement of constitutional policing”); see also U.S. Commission on Civil Rights, “U.S. Commission on Civil Rights Urges Department of Justice to Use All Available Tools to Work with Police Departments to Ensure Constitutional Policing,” Apr. 24, 2017, https://www.usccr.gov/press/2017/Statement_04-24-2017-Policing.pdf.