

COMMUNITIES UNITED FOR POLICE REFORM

Written Comments of Loyda Colon On Behalf of Communities United for Police Reform (CPR)

Submitted to the President's Task Force on 21st Century Policing
For *January 30, 2015 Listening Session on Policy and Oversight*

Dear Members of the Presidential Task Force on 21st Century Policing:

My name is Loyda Colon. I am the Co-Director of the Justice Committee, a community-based organization that has been working with victims of police brutality and families who have lost loved ones to the New York Police Department's (NYPD) use of excessive and deadly force for the last three decades. We are part of the leadership of Communities United for Police Reform (CPR), a multi-strategy campaign of over 60 organizations working together to end discriminatory policing practices. I am presenting this testimony on behalf of Communities United for Police Reform.

My comments are organized into three sections: (1) A brief introduction of Communities United for Police Reform; (2) A description of problems our communities face due to failures in policing policy and oversight, and the impact these problems have on individuals, families and communities; and (3) Policy and oversight recommendations to begin to address these problems.

1. About Communities United for Police Reform (CPR)

Communities United for Police Reform (CPR) is a multi-sector and multi-strategy campaign to end discriminatory policing practices in New York City. We aim to help build a lasting movement that promotes public safety and policing practices based on respect for the rights and dignity of all New Yorkers. The partners in this campaign come from all five boroughs, all walks of life, and represent many of those unfairly targeted by the New York Police Department. CPR works for systemic, policy and cultural change to promote safety while respecting the rights and dignity of all New Yorkers.

Through this campaign, we have helped to change the local conversation on public safety, increased the knowledge and practice of New Yorkers in observing and documenting police misconduct, and led the movement to enact the Community Safety Act – two landmark laws promoting increased accountability and transparency of the NYPD to all New Yorkers. The Community Safety Act, passed by the City Council overriding a mayoral veto, was a historic victory as it established the first Inspector General of the NYPD and an enforceable ban on bias-based policing.

While much of our work focuses primarily in New York, we know that the problems we face are happening on a regular basis in cities across the country. We stay in regular contact with partners across the country to ensure that we are building towards a unified set of solutions. The recommendations we offer in the area of "Policy and Oversight" are critical to keeping our communities safe while respecting the rights of all Americans

2. Overview of the Problem

Racial Injustice, Use of Force and Lack of Civil Rights Enforcement

The killings by police of Eric Garner and Akai Gurley in New York, Mike Brown in Ferguson, Tamir Rice, Tanisha Anderson and John Crawford in Ohio, Ezell Ford in Los Angeles -- and Jessie Hernandez in Denver just this past Monday -- have recently made the scope and systemic nature of the crisis of discriminatory and abusive policing more transparent for many Americans.

In New York City, like much of the country, the experience of discriminatory and abusive use of force and other examples of police violence disproportionately impact poor and working class communities of color. For NYC, this is especially true for Black and Latino communities, youth, immigrants, LGBT and gender non-conforming people, women, people who are homeless, people with disabilities and those perceived to be Muslim. This highlights racial and other discriminatory profiling and lack of civil rights enforcement that is systemic in police policies and practices across the country.

Sadly, tragic killings by police officers are like the tip of an iceberg. Daily incidents of discriminatory and abusive policing form the foundation of the iceberg, and include: racial and other discriminatory profiling; verbal and sexual harassment; unconstitutional stops, frisks and searches; excessive and discriminatory ticketing and arrests; deadly force and other uses of inappropriate/excessive force, intimidation and humiliation.

In New York City, the following cases help to demonstrate the extent of the problem:

- Javier Payne - 14 year old who was reportedly thrown through a window last year while handcuffed, suffering life-threatening injuries. The District Attorney declined to bring the case before a grand juryⁱ and there is no publicly available information regarding NYPD discipline of the Sgt who was accused of smashing Javier through the window or other officers on the scene.
- Stephanie Maldonado – beaten by an officer who was not in uniform, during an incident for alleged jaywalkingⁱⁱ. There is no publicly available information regarding whether there have been any NYPD disciplinary consequences for officers involved in the incident, and the District Attorney did not bring charges against any officer.

Recent national attention to police killings has helped to shine a bright light on the problem of excessive and deadly force. **Cases of excessive and deadly force have severe impacts on individuals, families and communities.** In addition to the obvious physical suffering and loss of life, police brutality survivors and families who have lost loved ones to police violence frequently experience severe trauma, depression and other emotional distresses as they fight for justice in a system that consistently fails. The stress from this can exacerbate family challenges, and can cause financial, housing, employment and/or educational instability. Family members who are impacted include parents, guardians, siblings, aunts, uncles, nieces, nephews and others - as well as chosen family members such as partners, friends.

The impact in many of these cases goes far beyond immediate family and friends, to impact neighborhoods and communities who fight alongside the family for justice, to have the system fail again and again. In addition to the violence experienced in these cases at the hands of police officers, **the lack of meaningful and timely accountability from police departments and local justice systems in cases of police brutality or killings results in re-traumatizing police brutality survivors and families** who have lost loved ones to police killings. These experiences result in fear, anger and lack of trust that

officers will protect and serve all New Yorkers or Americans equally. This is the opposite of what safety should look like in our communities.

Excessive and deadly force cases involving people with psychological or cognitive disabilities, and those who are under emotional distress are particularly disturbing. The killings of Iman Morales, Mohamed Bah and similar cases around the country demonstrate the too-often inappropriate use of force by officers in these cases, resulting in fatal consequences.

Lack of transparency and failure of existing discipline and accountability systems

There is a systemic lack of accountability for officers who use excessive or deadly force. Coupled with the lack of adequate early warning systems to help prevent such instances, this creates a perception that officers are above reproach, the law, and can act with impunity. It also reaffirms a perception that Black and Brown lives do not matter, which promotes the sense that officers are above the law and will not be held to account for incidents of excessive and deadly force used in communities of color.

Time and time again we see officers who have killed or brutalized community members remain on police forces collecting a paycheck. At best, discipline includes a slap on the wrist – lost vacation days or a reprimand. In many cases, there is no discipline of officers at all. The following are just a few of dozens of examples from New York City in the past two decades.

- In the 2012 case of 18 year old Ramarley Grahamⁱⁱⁱ, Ramarley was killed in his home in front of his grandmother and six-year old brother, after officers broke into his home without a warrant. February 2nd will mark three years since Ramarley was killed. Two grand juries were convened in this case. The first indicted one officer, but the grand jury decision was thrown out by a judge. Due to community pressure, a second grand jury was convened, which did not indict any officers. There is no publicly available information regarding whether there were any NYPD disciplinary charges brought against officers involved in the incident, and to the family's knowledge the involved officers are all still on the force. The Department of Justice is reportedly still investigating the case, but federal charges have not been brought against involved officers.
- In the 2006 case of Sean Bell^{iv}, who was killed in a hail of 50 bullets shot by 6 officers, it took almost six years before only one of the officers was fired. Three of the other officers were reportedly forced to retire almost 6 years later, with full pensions.
- In the 1995 case of Anthony Rosario and Hilton Vega the New York Civilian Complaint Review Board substantiated an excessive force complaint, but William Bratton, the Police Commissioner at that time, dismissed it.

Disturbingly, officers who use deadly force have frequently been the subjects of prior complaints and lawsuits claiming excessive force, civil rights violations and/or misconduct. A few examples of this include the NYPD officers who killed Anthony Baez, Kimani Gray and Shantel Davis.

State criminal justice systems as well as the Department of Justice also continually fail to secure justice and accountability. There is an inherent conflict of interest when District Attorneys are called upon to investigate police officers, who they work with and rely on everyday. Families often turn to the DOJ as a last hope for justice after the local criminal justice system fails. For a variety of reasons, this rarely results in prosecution of officers. In fact, in New York City, only one example of a civilian killed by an

NYPD officer in the past 20 years has resulted in a federal conviction (the 1998 federal conviction of Officer Frances Livoti in the 1994 killing of Anthony Baez, on civil rights violations).

Finally, there is frequently no transparency for and terrible treatment of families who loved ones have been killed, both in the immediate aftermath of the killing and during departmental investigations. One extreme example is the direct aftermath of the killing of Ramarley Graham: his grandmother who witnessed Ramarley being shot and killed, was held for seven hours without access to her attorney; his mother was assaulted while at the precinct; his parents were not communicated with and were left in the dark by the NYPD about what had happened; and Ramarley's body was lost by the City for several days. In most cases, there is little to no communication with families regarding the status of department investigations.

3. Recommendations

It is imperative that any changes enacted must not only happen “on the books” but must be structural, systemic and cultural to ensure that there are changes that demonstrate that the lives of Black and Brown Americans are valued, and that result in real changes in how low-income communities of color experience policing. We offer the following recommendations for change in the areas of policy and practice, accountability and transparency.

Policy and Practice

1. An end to broken windows, and other discriminatory and abusive policing policies. This includes hyper-aggressive selective enforcement of low-level offenses, discriminatory arrests for violations (non-criminal offenses), enforcement of possession of small amounts of marijuana; and blanket surveillance of Muslim communities and political activists.

2. Standardized use of force policies that seek to eliminate excessive use of force and incentive communication and de-escalation. Policies should begin with the assumption that force should be used only as an extreme last measure. Many advocates suggest that there should be mandatory psychological and substance abuse testing for officers who use deadly force, as well as those involved in police brutality incidents. In addition, many have advocated nationally for development of crisis intervention teams comprised of mental health professionals and care workers to act as first responders, rather than police officers in certain situations. Survivors of police brutality and families who have lost loved ones to police incidents should be consulted in development of any national standardization of use of force policies.

3. Develop early warning systems within police departments to identify and appropriately discipline officers who engaged in discriminatory profiling, misconduct and excessive use of force.

4. Immediate demilitarization of local and state police. The federal government should immediately suspend the Section 1033 program and all other federal programs that provide military surplus equipment and weapons to local police forces. A full and public audit should be conducted of the program to date.

6. Federal government should revoke federal funding to local police departments found to engage in discriminatory practices under Title VII of the Civil Rights Act.

7. Expand, pass, and implement anti-profiling measures, such as the End Racial Profiling Act (ERPA), to be include race, ethnicity, religion, national origin, as well as age, gender, gender identity or expression, sexual orientation, immigration status, disability and housing status.

8. Obama Administration should develop, legislate, and enact a National Plan for Racial Justice that address persistent and ongoing forms of racial discrimination and disparities that exist in nearly every sphere of life including: criminal justice, employment, housing, education, health, land/property, voting, poverty and immigration. Input and leadership from impacted communities must be prioritized in the development of this plan.

Accountability

1. Develop and implement comprehensive accountability systems that include clear consequences in police disciplinary procedures for officers who utilize unjustified excessive or deadly force.

2. Establish independent special prosecutors for all cases involving civilians killed by police and/or while in police custody, as well as excessive force cases.

3. Prohibit police disciplinary policies to be subject to collective bargaining negotiations.

Transparency, research and data collection

1. Require data on all stop, frisk, search, summons, arrest, use of force, injury/deaths while in police incidents to be collected, analyzed and publicly reported on (including demographic data such as race, gender, age) on a monthly basis by police departments, while protecting personal privacy data.

2. Establish a federal database on use of force, civilian deaths, and disciplinary and criminal justice outcomes. Incidents should include firearm discharges, killings by police, and deaths while in police custody, disaggregated by demographic data such as race, gender, and age.

3. The Department of Justice should launch an investigation into broken windows policing and the use-of-force policies and practices of the NYPD.

4. Convene a Congressional Hearing to investigate the criminalization of communities of color, racial and other discriminatory profiling, surveillance, police abuses and torture by law enforcement agencies.

ⁱ Bronx District Attorney decides not to file charges against NYPD cop accused of slamming boy through bar's window <http://www.nydailynews.com/new-york/nyc-crime/bronx-attorney-decides-not-file-charges-nypd-accused-slamming-boy-bar-window-article-1.2000966>

ⁱⁱ http://gothamist.com/2014/08/03/woman_claims_cop_assaulted_her_for.php and <http://7online.com/news/investigation-woman-claims-police-brutality-against-nypd-officer/229978/>

ⁱⁱⁱ Ramarley Graham Was Killed By The NYPD Over Two Years Ago, And Nothing Has Happened <http://huff.to/1A0sjQ1>

^{iv} Officer in Bell Killing Is Fired; 3 Others to Be Forced Out <http://nyti.ms/15sqPh6>