

March 1, 2016

Honorable Karol Mason  
Assistant Attorney General  
Office of Justice Programs  
U.S. Department of Justice  
810 Seventh Street, NW  
Washington, DC 20531

**Request to Condition Federal Grants on Data Collection and Reporting &  
Provide Regulations on Deaths in Custody Reporting Act**

Dear Assistant Attorney General Mason:

The undersigned national, state, and local criminal justice, civil rights, human rights, faith-based, immigrants' rights, disability rights, LGBTQ, and open government organizations are writing to request that the Office of Justice Programs (OJP) condition federal criminal justice grants on data collection and reporting on police-civilian encounters. We are also writing to request that OJP issue regulations on the implementation of the Deaths in Custody Reporting Act (DCRA).

Since the 2014 fatal police shooting of Michael Brown in Ferguson, Missouri, national attention has focused on the use of force by law enforcement. People of color are disproportionately subjected to such force, with minorities constituting 47.2% of all persons killed by police in 2015.<sup>1</sup> Unfortunately, this statistic cannot be compared to data kept by the federal government because it is largely incomplete. Only 224 of 18,000 law enforcement agencies reported fatal police shootings to the Federal Bureau of Investigation (FBI) in 2014, though evidence suggests the actual number of fatal shootings is far greater.<sup>2</sup> The 2013 FBI Uniform Crime Report indicates that there were 461 justifiable homicides by law enforcement in 2013.<sup>3</sup> However, with *The Guardian* and the *Washington Post* now keeping track, we have reason to believe annual numbers of people killed by police exceeds 1,000.<sup>4</sup> Data collection by

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<sup>1</sup> John Swaine, Oliver Laughland, Jamiles Lartey & Ciara McCarthy, *Young black men killed by US police at the highest rate in year of 1134 deaths*, THE GUARDIAN, Dec. 31, 2015, available at <http://www.theguardian.com/us-news/2015/dec/31/the-counted-police-killings-2015-young-black-men>.

<sup>2</sup> John Swaine & Oliver Laughland, *Eric Garner and Tamir Rice among those missing from FBI record of police killings*, THE GUARDIAN, Oct. 15, 2015, available at <http://www.theguardian.com/us-news/2015/oct/15/fbi-record-police-killings-tamir-rice-eric-garner>.

<sup>3</sup> Federal Bureau of Investigation, *Crime in the United States 2013*, available at <https://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/crime-in-the-u.s.-2013/offenses-known-to-law-enforcement/expanded-homicide/expanded-homicide-data-table-14-justifiable-homicide-by-weapon-law-enforcement-2009-2013.xls> (last visited Feb. 29, 2016).

<sup>4</sup> See John Swaine & Oliver Laughland, *Eric Garner and Tamir Rice among those missing from FBI record of police killings*, THE GUARDIAN, Oct. 15, 2015, available at <http://www.theguardian.com/us-news/2015/oct/15/fbi-record-police-killings-tamir-rice-eric-garner>. See also Kimberly Kindy, Marc Fisher, Julie Tate & Jennifer Jenkins, *A Year of Reckoning: Police Fatally Shoot Nearly 1,000*, WASH. POST, Dec. 26, 2015, available at

media outlets has been critical to understanding police-civilian encounters over the past year, but such accounting should be the responsibility of the federal government. Accurate, reliable data will provide the best depiction of 21st century policing and allow policing experts to better shape law enforcement tactics and policies.

The Office of Justice Programs should mandate data collection and reporting on police involved shootings and other excessive force by state and local law enforcement agencies that benefit from Department of Justice criminal justice grants and programs. The federal government awards close to \$4 billion in such grants annually,<sup>5</sup> and any discretionary grant should be conditioned upon providing data. Any statutory or formula grant, including the Edward Byrne Memorial Justice Assistance Grant (Byrne JAG), should require data reporting as part of its existing performance metrics. To achieve complete and uniform data collection and reporting, the federal government must solicit disaggregated data that is reflective of all police-civilian encounters, including those encounters with people of color, women, and people with disabilities.

We recognize that the Deaths in Custody Reporting Act (DCRA)<sup>6</sup> is designed to provide data on fatal police use of force while people are in police custody. However, the law does not require reporting non-fatal uses of force or uses of force during non-custodial encounters and it is not clear if the Attorney General will withhold federal funds from non-compliant jurisdictions. Therefore, we also recommend that OJP issue regulations on the implementation of DCRA. Among other things, the regulations should define the term “custody,” specify penalties for non-compliance, and provide a plan for data transparency. The regulations should also discuss how all federal law enforcement, including Customs and Border Protection (CBP), will comply with DCRA.

Both the Attorney General and the FBI Director have said that data collection and reporting is necessary.<sup>7</sup> The President’s Task Force on 21st Century Policing has recommended that agencies be required to “collect, maintain, and report data to the federal government on all officer involved shootings, whether fatal or nonfatal, as well as any in-custody death.”<sup>8</sup> The Task Force has also

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<http://www.washingtonpost.com/sf/investigative/2015/12/26/a-year-of-reckoning-police-fatally-shoot-nearly-1000/>.

<sup>5</sup> Brennan Center for Justice, *Success-Oriented Funding: Reforming Federal Criminal Justice Grants* (2014), available at

[https://www.brennancenter.org/sites/default/files/publications/SuccessOrientedFunding\\_ReformingFederalCriminalJusticeGrants.pdf](https://www.brennancenter.org/sites/default/files/publications/SuccessOrientedFunding_ReformingFederalCriminalJusticeGrants.pdf).

<sup>6</sup> Pub.L. 113-242.

<sup>7</sup> See The United States Department of Justice, *Attorney General Lynch: Use-of-Force Data is Vital for Transparency and Accountability*, Oct. 5, 2015, available at <http://www.justice.gov/opa/pr/attorney-general-lynch-use-force-data-vital-transparency-and-accountability> (last visited Feb. 29, 2016). See also Federal Bureau of Investigation, *Speeches: James B. Comey, Director, Federal Bureau of Investigation, Georgetown University*, Feb. 12, 2015, available at <https://www.fbi.gov/news/speeches/hard-truths-law-enforcement-and-race> (last visited Feb. 29, 2016).

<sup>8</sup> President’s Task Force on 21st Century Policing, *Final Report of the President’s Task Force on 21st Century Policing*, May 2015, 2.2.4 Action Item, 21 (May 2015) available at [http://www.cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf).

recommended data collection concerning sexual assault and misconduct by law enforcement agents.<sup>9</sup> We appreciate the Administration's commitment to data collection and reporting and welcome the opportunity to work with you on this issue.

For all these reasons, we urge OJP to a) condition federal criminal justice grants on data collection and reporting on police-civilian encounters and b) provide regulations on the implementation of the Deaths in Custody Reporting Act (DCRA). We also respectfully request a meeting with you to discuss this matter further. If you have any questions or comments, please feel free to contact Kanya Bennett, Legislative Counsel with the ACLU, phone: (202) 715-0808 or email: [kbennett@aclu.org](mailto:kbennett@aclu.org) or Sakira Cook, Counsel with the Leadership Conference on Civil and Human Rights, phone: (202) 263-2894 or email: [cook@civilrights.org](mailto:cook@civilrights.org).

Sincerely,

AFL-CIO  
Alliance San Diego  
American Civil Liberties Union  
Amnesty International USA  
Arab American Institute  
Asian Pacific American Labor Alliance, AFL-CIO (APALA)  
Bill of Rights Defense Committee/Defending Dissent Foundation  
Black and Pink  
Black Women's Roundtable Policy Network  
Black Youth Vote/Black Male Initiative  
Capital Area Immigrants' Rights (CAIR) Coalition  
Center for American Progress  
Center for Community Change Action  
Church of Scientology National Affairs Office  
Coalicion de Lideres Latinos-CLILA (Dalton, GA)  
Conversations with Friends (MN)  
Council on American-Islamic Relations (CAIR)  
Criminal Justice Policy Foundation  
Drug Policy Alliance  
Equality New Mexico  
Equity Matters IN  
The First Existentialist Congregation's Social Justice Guild  
The Gathering for Justice  
Georgia Detention Watch  
Georgia Latino Alliance for Human Rights  
Government Accountability Project

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<sup>9</sup> See *id* at 2.13.1 Action Item, 28.

Grassroots Leadership  
Hip Hop Caucus  
Human Rights Watch  
Immigrant Legal Advocacy Project  
Immigrant Legal Resource Center  
Justice League NYC  
Justice Strategies  
Kino Border Initiative  
LatinoJustice PRLDEF  
Lawyers' Committee for Civil Rights Under Law  
The Leadership Conference on Civil and Human Rights  
Mommieactivist and Sons  
Muslim Advocates  
NAACP  
National Action Network  
National African American Drug Policy Coalition Inc.  
National Association of Criminal Defense Lawyers  
National Association of Social Workers (NASW)  
National Center for Transgender Equality  
National Coalition of Anti-Violence Programs  
National Coalition on Black Civic Participation  
National Council of Asian Pacific Americans (NCAPA)  
National Council of Churches  
National Council of La Raza (NCLR)  
National Disability Rights Network (NDRN)  
National Employment Law Project  
National Immigrant Justice Center  
National Immigration Law Center  
National LGBTQ Task Force  
National Network for Arab American Communities  
National Urban League  
OCA – Asian Pacific American Advocates  
One America (Washington State)  
OpenTheGovernment.org  
Organization for Black Struggle  
ParentWatch  
Pastor & Associates, P.C.  
Peace Alliance  
PFLAG National  
PICO Network LIVE FREE  
Prison Policy Initiative  
Reformed Church of Highland Park

Refugee and Immigrant Center for Education and Legal Services (RAICES)  
SAALT  
San Diego Immigrant Rights Consortium  
Southern Border Communities Coalition  
Southern Poverty Law Center  
Student Peace Alliance  
Sunlight Foundation  
Transformative Justice Coalition  
UC Davis Immigration Law Clinic  
Union for Reform Judaism  
US Human Rights Network's Police Crimes Members Initiated Action Team  
Wilco Justice Alliance (Williamson County, Texas)  
Women Who Never Give Up  
Women's All Points Bulletin, WAPB

cc: Denise E. O'Donnell, Director, Bureau of Justice Assistance  
William J. Sabol, Director, Bureau of Justice Statistics  
Sarah R. Saldaña, Director, U.S. Immigration and Customs Enforcement  
R. Gil Kerlikowske, Commissioner, U.S. Customs and Border Protection