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Testimony for Member Day, House Committee on the Judiciary

Warrantless SmartCar Search Legislation

As we all know, cars are getting smarter and more connected via the cloud and your cell phone. Cars are storing more and more of our personal data: phone calls, songs, gps location, and contacts, to name a few. As we all know, if there is probable cause, law enforcement does not need a warrant to search your car. According to a recent SCOTUS decision, *Riley v. California*, however, law enforcement does need a warrant to search your phone because of the personal information that it holds. Given our cars are essentially becoming driving smartphones, I'm working on a bill to require and clarify that law enforcement must obtain a warrant before searching and downloading the data stored on your car. Right now, as we all know, law enforcement does not need a warrant to search your car if there is probable cause. Given the growth of smart and connected cars, this bill closes the new loophole created by clarifying that law enforcement needs a warrant to obtain data that is stored on you car. This bill does nothing to prohibit law enforcement from obtaining a warrant to download the data on the car if there is good reason to do so. I've been working on it with the ACLU, the Information Technology and Innovation Foundation (ITIF) and Lindsey Barrett at the Georgetown Law School. I plan to introduce this legislation this Fall and hope it is received favorably by this Committee. Thank you for considering this legislation.

Use of Force by Police Must be a Last Resort, Not the First

We recently marked the fifth anniversary of the tragic death of Mike Brown and the beginning of the historic Ferguson uprising. Tragically, despite the best efforts of advocates across the country, there have been far too many unarmed Americans killed by police unnecessarily since that time.

It is unacceptable that African-Americans make up 13 percent of the U.S. population, but account for 25 percent of people fatally shot by police. Black men aged 15–34 are approximately 10 times more likely to be killed by police than other people. And while the racial disparity is the most alarming aspect of the problem, even white Americans are affected by excessive police use of force, as they make up nearly 50 percent of unarmed people killed by police. 99 percent of the officers involved in the 1,165 killings by police officers in 2018 were not charged with a crime. It is time to address one of the root causes of the problem -- the legal standards that govern police use of force.

That is why I have introduced, with Rep. Wm. Lacy Clay and 20 of my colleagues, the Police Exercising Absolute Care with Everyone Act, also known as the PEACE Act, which would change the federal standard for the use of force by federal officers to require that force be used only when necessary to prevent imminent death or serious bodily injury. This legislation would also requires states that wish to continue receiving public safety funding from the U.S.

Department of Justice to enact similar legislation to require a comparable standard for local police officers. The legislation builds on California's historic legislation (AB 392, "Act to Save Lives") enshrining the "necessity" standard.

This is not a radical position. National standards in most European countries conform to the European Convention on Human Rights, which impels its 47 signatories to permit only deadly force that is "absolutely necessary" to achieve a lawful purpose. The United Kingdom, France, Norway, and dozens of others conform to the necessity standard.

Evidence indicates that a "necessity" standard for use of force yields positive results for citizens and police officers alike. After the Seattle Police Department was required by President Obama's Justice Department to change its use of force standard to one of necessity in 2012, a comprehensive report by the monitoring team found that the rate of injuries to officers remained flat or went down slightly, demonstrating that "decreased use of force has not placed officers at any higher risk or made officers less able or willing to use force to defend themselves from threats or harm." Meanwhile, there was a net decrease of 743 incidents -- a 60 percent drop -- in the use of moderate and high-level use of force.

Leading civil rights groups have endorsed this legislation, including National Action Network (NAN), NAACP, ACLU, Leadership Conference on Civil and Human Rights NAACP – Legal Defense and Educational Fund (LDF), Amnesty International, among many others.

As Hilary O. Shelton, the Director of the NAACP Washington Bureau explains, "The PEACE Act makes a clear, simple, and yet in too many cases life-saving change. By changing the standard for the acceptable use of force, we will be requiring law enforcement agents to try other options rather than immediately resorting to the reactionary use of lethal force. Furthermore, by incentivizing states and localities to require policies that emphasize non-lethal tactics, the PEACE Act will be spreading its effective ability to enforce the law without the needless taking of lives. Upon enactment, the PEACE Act will help rebuild the trust and perception of integrity between diverse communities and the law enforcement officers whose crucial job it is to protect and serve them. This trust and the presence of integrity is essential."

Thank you kindly for your time and your consideration of this important matter.