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Chairman Nadler, Ranking Member Jordan and members of the Committee: I am Paul Butler, a law professor at Georgetown University and a former federal prosecutor. For more than twenty five years I have researched and written about race and the criminal legal process. I am the author of many scholarly articles, published in leading journals including the law reviews of Georgetown, Harvard, Yale and Stanford, and two books, including *Chokehold: Policing Black Men*. As a federal prosecutor with the United States Department of Justice, I specialized in prosecuting corrupt federal law enforcement officers. I also served as a prosecutor in the District of Columbia, prosecuting misdemeanor street crimes. Thank you for the opportunity to testify today.

There has never, not for one minute in American history, been peace between black people and the police. And nothing since slavery – not Jim Crow segregation, not forced convict labor, not lynching, not restrictive covenants in housing, not being shut out of New Deal programs like social security and the GI bill, not massive resistance to school desegregation, not the ceaseless efforts to prevent African Americans from voting – nothing has sparked the level of outrage among African Americans as when they have felt under violent attack by the police. Most of the times that African Americans have set aside traditional civil rights strategies like bringing court cases and marching peacefully and instead have risen up in the streets, destroyed property and attacked symbols of the state has been because of something the police have done. Watts in 1965, Newark in 1967, Miami in 1980, Los Angeles in 1992, Ferguson in 2015, Baltimore in 2016, Charlotte in 2016, Minneapolis in 2020 – each of these cities erupted after the police killing an African American person. Of course unlawful violence is never acceptable - either as a misguided approach by a few to seeking change, or as an abuse of the power and the sacred trust we place in law enforcement officers.

The problem is not mainly bad apple cops. Police officers are no more racist than law professors and politicians, or any other occupation. Cops have some of the most difficult jobs in the

nation and most serve with honor and valor. I have on many occasions, including when I have had to summon officers for help, reflected that I do not have the courage to be a police officer.

Still virtually every objective investigation of a U.S. law enforcement agency finds that the far too often, police, *as policy*, treat African Americans with contempt. In New York, Baltimore, Ferguson, Chicago, Los Angeles, Cleveland, San Francisco, and many other cities, the U.S. Justice Department and federal courts have stated that the *official* practices of police departments include violating the rights of African Americans. The police kill, wound, pepper spray, beat up, detain, frisk, handcuff, and use dogs against blacks in circumstances in which they do not do the same to white people. It is the moral responsibility of every American, when armed agents of the state are harming people in our names, to ask why.

In the past two weeks we have seen many acts of bravery, forbearance and grace by police officers. Cops in New York City took a knee, in a sign of solidarity with the people who marched. In Atlanta, officers exchanged fist bumps with protestors. Houston Police Chief Art Acevedo arranged for an honor guard to accompany George Floyd's body when it returned to his city.

Unfortunately we have also witnessed, these past two weeks, police officers commit deplorable acts of violence against citizens who they have sworn to serve and protect. In New York, officers drove two large police vehicles into a crowd of protestors. In Atlanta, police broke the windows of a car, dragged two college students from the vehicle, and shot them with a stun gun. In Buffalo, a police officer assaulted a 75 year old man by knocking him to the ground but what happened next was worse. When two officers were disciplined for that criminal conduct, 57 other officers quit the squad in protest. President Obama's Task Force on 21st Century Policing decried the warrior mentality present among too many law enforcement officers. In Buffalo, the nation saw warriors on steroids.

When police officers treat citizens like an opposing force, African American and Hispanic people disproportionately bear the costs. Black people are approximately 20% of the population of Minneapolis but approximately 60% of the people who cops use violence against. According to the US Department of Justice Bureau of Justice Statistics, during traffic stops, African Americans are three times more likely than white people to be threatened or subjected to force. Almost 90% of the people stopped and frisked in New York City were black and Hispanic – even though officers were more likely to find contraband in white people who were searched.

The result, as Michelle Alexander observed in her groundbreaking book *The New Jim Crow*, is that there are more black people in the criminal legal system today than there were slaves in 1850. When I mentioned to a young man I mentor that, if he attended protests about the killing of George Floyd, he should wear a mask and practice social distancing to the extent possible, he said he certainly would try. But he also wanted me to know that as a young black man, he has a greater risk of dying from police violence than from the coronavirus. According to research published in the Proceedings of the National Academy of Science, 1 in 1000 African American men and boys will be killed by the police.

What African Americans need, to realize equal justice under the law, is for selective enforcement and police brutality to end. We need the police to stop killing us, beating us up, and arresting us in situations in which they would not arrest do those things to white people. The Justice in Policing Act of 2020 establishes some common sense reforms to accomplish these crucial objectives. In the brief time I have remaining, I will highlight three.

First, the Act establishes national standards on the use of deadly force, and requires officers to employ de-escalation techniques. There are 18,000 different police departments in the United States, and the problem is that right now there are 18,000 different ways of policing. To establish accountability and transparency among the men and women who are licensed to kill, basic standards

must be imposed. The Act requires federal officers to use deadly force only as a last resort, and to employ de-escalation techniques, and conditions grants to state and local law enforcement agencies on their establishing the same use of force standards.

Second, the Act removes some of the barriers that make it extremely difficult to bring criminal police officers to justice. Of the approximately 100-150 officers who have been charged with murder for using deadly force in the line of duty, fewer than 10 have been convicted of murder. Some others have been convicted of lesser offenses, but the majority have had charges dismissed or been found not guilty. The Act creates a grant program for state attorneys' general to create an independent investigation process for law enforcement misconduct or excessive use of force. It also reduces some of the barriers that have prevented federal prosecutors from charging officers with civil rights violations.

Third, the Act requires federal law enforcement officers to establish training to cover racial bias, implicit bias, procedural justice and the duty to intervene, and conditions federal funding to state and local police departments on the establishment of such training. In Minneapolis, according to the criminal complaints, as one officer pressed Mr. Floyd to the ground by his neck, another by his legs, a third by his back, and as a fourth officer acted as a look out, preventing any by-standers from rendering aid, one person in the crowd made a statement that should not have been profound, but in the circumstance, it was. That person said "He's human, bro." But those four officers did not treat Mr. Floyd like a human being. Too often police work seems to enforce the dehumanization of people of color. Understanding the history and reality of racism in the United States will make our men and women in blue more effective police officers.

One note of caution: far too often, police unions, including The Fraternal Order of Police ("FOP"), have effectively blocked reform. Police unions frequently stand in the way of progress with their rhetoric and with the special protections they win for officers in the collective bargaining process.

The president of the Philadelphia FOP called Black Lives Matter protestors “a bunch of rabid animals.” After a Cleveland officer killed twelve year old Tamir Rice, who had been playing with a toy gun, another FOP leader tweeted “Act like a thug, you’ll be treated like a thug.” In Chicago, when an officer was fired for shooting a black man named Laquan McDonald sixteen times, the local FOP hired him as a janitor. That officer was subsequently convicted of murder.

Police reform is about transparency and accountability. Police unions frequently resist those important goals by fighting to keep disciplinary records of officers secret. They often stand against common sense reforms like residency requirements. In Minneapolis, only 7% of officers actually live in the city they serve and protect. We know that officers are more effective crime fighters and community caretakers when they are our neighbors and friends.

Of course police officers deserve the same labor protections as other workers. Harvard Law School Professor Benjamin Sachs has suggested that one remedy might be to allow collective bargaining with regard to wages and benefits, but not on issues like use of force and police misconduct.

In the end, this hearing is about the legitimacy and sustainability of American democracy. “No justice, no peace” is not a threat. It is simply a description of how the world works. Some activists involved in the movement for black lives speak of their work as creating a “Black Spring,” similar to the Arab Spring movements that attempted to bring democracy to some Middle Eastern countries. The multi-racial, multi-generational demonstrations that have risen all over the United States reflect the wonderful diversity of our great nation, and the potential of ordinary citizens to, once again, make our country live up to its highest ideals. The Justice in Policing Act of 2020 heralds the urgency of transformation and the promise, for all Americans, of equal justice under the law.

