STATEMENT OF
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BEFORE THE
HOUSE COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON THE CONSTITUTION, CIVIL RIGHTS, AND CIVIL LIBERTIES

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Chair Nadler, Ranking Member Jordan, Chair Cohen, Ranking Member Johnson, and Members, thank you for inviting me to testify. I chair the United States Commission on Civil Rights, and I come before you today to speak about the Commission's recent and ongoing work to evaluate the effectiveness of civil rights enforcement at the United States Department of Justice.

The U.S. Department of Justice's Civil Rights Division (DOJ or Civil Rights Division) is the nation's oldest federal civil rights enforcement agency, created in 1957 by the same statute that created the Commission I chair to perform the civil rights watchdog function I am pleased to fulfill in part through this testimony today. The Civil Rights Division at DOJ is tasked with "enforcement of all Federal statutes affecting civil rights" and files civil rights litigation to fulfill its mission.[1] Along with its broad mandate to investigate compliance with federal civil rights laws, the Civil Rights Division is also tasked with issuing policy guidance, providing technical assistance, conducting research, providing educational materials to the public as well as impacted entities, and consulting with other agencies (federal, state and local).[2] As 17 state Attorneys General testified to the Commission two years ago, Congress has reserved to the federal government, and specifically to DOJ, powerful remedies to redress civil rights wrongs; "If the federal government declines to enforce these laws, the states are not positioned to pick up the slack."[3] Notwithstanding these very high stakes to the American people, the Commission's findings from careful study demonstrate that the Civil Rights Division is not currently fulfilling this mandate, dangerously leaving Americans vulnerable to violation of their civil rights.

[1] 28 C.F.R. § 0.50(a); U.S. Dep't of Justice, Justice Manual, Title 8-1.100 (March 2018) (providing the full list of civil and criminal civil rights enforced by the Civil Rights Division), https://www.justice.gov/jm/jm-8-1000-civil-rights-division; *see also* U.S. Commission on Civil Rights, Are Rights A Reality? Evaluating Federal Civil Rights Enforcement, Nov. 2019, p. 62 (hereinafter "Are Rights A Reality"), https://www.usccr.gov/pubs/2019/11-21-Are-Rights-a-Reality.pdf.

[2] 28 C.F.R. § 0.50(a)-(n); U.S. Dep't of Justice, Title VI Legal Manual (Mar. 18, 2019), at Section III, Department of Justice Role Under Title VI, https://www.justice.gov/crt/fcs/T6manual (describing DOJ and other agencies' role in issuing guidance and regulations, review applications for federal funding, monitor compliance, and enforce civil rights laws against recipients); *see also* Are Rights A Reality at 68, 76.

[3] Are Rights A Reality at 10.

DOJ Civil Rights Enforcement

Despite the compelling bipartisan testimony submitted to the Commission about ongoing civil rights harms, DOJ's Civil Rights Division enforcement efforts generally decreased between Fiscal Years 2016 through 2018.[4] The Civil Rights Division resolved 143 total cases in Fiscal Year 2016, followed by 136.5 cases in Fiscal Year 2017, followed by 109 cases in Fiscal Year 2018. Those resolution numbers represent a nearly 25% drop between FY16 and FY18.[5] The drop was not consistent across the different subsections of the Civil Rights Division; the most significant drops were in the sections on Educational Opportunities, Housing, and Special Litigation.[6] In addition to the actual drop in case resolutions in recent years, the Trump Administration has repeatedly requested funding reductions to DOJ's civil rights work, signaling its dollar commitment to doing less work, and in fact reduced the number of staff at DOJ's Civil Rights Division.[7] This issues should not be partisan: the gap in enforcement runs counter to what former Republican Administration DOJ civil rights officials testified should occur in conservative administrations. A former DOJ civil rights official during the George W. Bush presidency, Robert Driscoll, testified to the Commission that "one thing a Republican administration should be able to do is . . . to enforce mightily the kind of core statutory functions" the Division has.[8]

Mr. Driscoll further testified that "some of the most important work, civil rights work that is done in the country has nothing to do with our political differences but, rather, rule of law that tries to make our intellectual agreement, statutory promises, and constitutional convictions a reality for all of us."[9] As firmly as I share that view, I am pained to report to you today that in this Administration the Department of Justice Civil Rights Division fails to make these statutory promises and constitutional convictions real in the lives of all Americans.

The Civil Rights Division during the Trump Administration has also failed to issue policy guidance where necessary. Guidance documents are necessary tools for the regulated community to understand their legal obligations under federal civil rights laws, and guidance documents help the general public to know their rights and understand the government's role in enforcing those rights.[10] But in the last three years, the Department of Justice has withdrawn close to 50 guidance documents, including *inter alia* guidance on compliance with the Americans with Disabilities Act (ADA), guidance pertaining to protecting the rights of legal permanent residents, guidance

[4] Ibid., 502.

[5] Ibid., 102, 502.

[6] Ibid., 502.

[7] Ibid., 34.

[8] Are Rights a Reality? Evaluating Federal Civil Rights Enforcement Briefing before the U.S. Commission on Civil Rights, Washington, DC, Nov. 2, 2018, transcript, p. 129, https://www.usccr.gov/calendar/2018/11-02-Evaluating-Federal-Civil-Rights-Enforcement.pdf.

[9] Are Rights A Reality at 28.

[10] Are Rights A Reality at 501, 53-60.

on federal protections against national origin discrimination, as well as joint DOJ and Department of Education guidance on the use of race by educational institutions and the civil rights of transgender students.[11] Yet, DOJ did not replace the vast majority of these guidance documents with new guidance about how to satisfy the law the rescinded documents described. I emphasize this failure to issue replacement guidance in crucial civil rights areas both because creating a knowledge vacuum where none had otherwise existed is in itself harmful to civil rights compliance but also because DOJ has a mandatory obligation, which it has therefore failed, that it "shall" issue policy guidance regarding civil rights.[12]

The withdrawn documents included two guidance documents related to access to justice for low-income Americans to simply remind state Chief Justices and state court administrators of what the Constitution requires regarding the enforcement of fines and fees and to promote best practices for municipal courts in interaction with individuals who are unable to pay.[13] The rescinded guidance pointed to potential violations of civil rights laws, including Title VI of the Civil Rights Act of 1964, which guards against race discrimination by recipients of federal funds. The rescinded guidance also discussed the prior Justice Department investigation of the Ferguson Police Department, which concluded that "Ferguson's municipal court and police practices are due, at least in part, to intentional discrimination, as demonstrated by evidence of racial bias and stereotyping of African American residents by certain Ferguson police and municipal court officials."[14] The Commission strongly criticized the withdrawal of these guidance documents.[15] In 2017, the Commission majority found that court imposition of fines and fees for criminal and civil justice activities has become a common practice in many jurisdictions across the country—and that even after public condemnation of the excesses of such practices, most states have taken virtually no steps to conform their actions to the law.[16] The Commission majority also found that the best available data reflects that municipal fee targeting tends to aggregate in

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[11] Ibid., 136, 139-40 (citing U.S. Dept. of Justice, "Press Release: Attorney General Jeff Sessions Rescinds 25 Guidance Documents," Dec. 21, 2017, https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-rescinds-25-guidance-documents; U.S. Dept. of Justice, "Press Release: Attorney General Jeff Sessions Rescinds 24 Guidance Documents," Jul. 3, 2018, https://www.justice.gov/opa/pr/attorney-general-jeff-sessions-rescinds-24-guidance-documents).

[12] 28 C.F.R. § 0.50 (stating that under the broad mandate set forth in Executive Order 12,250, the Civil Rights Division "shall" issue policy guidance, among other responsibilities); *see also* Are Rights A Reality at 76.

[13] U.S. Department of Justice, Dear Colleague Letter, March 14, 2016, https://www.justice.gov/opa/file/832541/download; U.S. Department of Justice, Advisory for Recipients of Financial Assistance, January 2017, https://ojp.gov/archives/documents/AdvisoryJuvFinesFees.pdf.

[14] U.S. Commission on Civil Rights, Targeted Fines and Fees Against Communities of Color: Civil Rights and Constitutional Implications, Sept. 2017, p. 13 (hereinafter "Targeted Fines and Fees"), https://www.usccr.gov/pubs/2017/Statutory_Enforcement_Report2017.pdf.

[15] Ibid. (citing U.S. Commission on Civil Rights, "U.S. Commission on Civil Rights Strongly Criticizes Attorney General Jeff Sessions' Withdrawal of Critical Civil Rights Guidance," Jan. 19, 2018 (hereinafter "Withdrawal of Critical Civil Rights Guidance Statement"), https://www.usccr.gov/press/2018/01-19-PR-Sessions.pdf).

[16] Withdrawal of Critical Civil Rights Guidance Statement at 1 (citing Targeted Fines and Fees at 52).

communities of color and, to a lesser degree, in low-income communities.[17] The Commission heard from judicial officials who candidly admitted that some of their judges did not know the law prohibiting jailing people for their inability to pay fines and fees. Specific to the Department's guidance in this area, the Commission's report recognized that the Dear Colleague letters increased knowledge of and compliance with the relevant law, leading to important reforms among states and municipalities.[18]

The withdrawn documents also included Department guidance addressing integration of people with disabilities to state and local government employment service systems, as required under the ADA.[19] DOJ had complemented that guidance by a series of suits DOJ brought against state and local governments that resulted in settlements and consent decrees in which jurisdictions agreed to release persons with disabilities from unduly sheltered and segregated environments.[20] The Commission received testimony from Alison Barkoff, Director of the Center for Public Representation, who served as Special Counsel for Olmstead Enforcement in the Civil Rights Division of the Department of Justice from 2010-2014, that after the rescission of federal guidance, the laws are "not fully being enforced at this point" and that the federal government has "backed away" from offering technical assistance and guidance in recent years.[21] DOJ litigation to enforce the ADA's integration mandate has also decreased.[22]

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[17] Targeted Fines and Fees at 72.

[18] In addition to the direct concern about legal compliance relative to the imposition of fines and fees, their imposition can have substantial negative collateral consequences including with respect to the right to vote. As our Alabama Advisory Committee reported, on the impediments to voting that result from such a requirement, "[s]uch fines and fees are often set . . . unconnected in any way to the facts of the case or the harms the defendant inflicted with his or her crimes" which "seems to serve little purpose but to ensure that those without economic resources remain ineligible to vote." Alabama Advisory Committee to the U.S. Commission on Civil Rights, Barriers to Voting in Alabama, Feb. 2020, p. 28, https://www.usccr.gov/files/2020-07-02-Barriers-to-Voting-in-Alabama.pdf. The Committee's findings led to their recommendation that the payment of all fines and fees be removed as a barrier to eligibility for voting rights restoration in the state of Alabama. Ibid., 30.

[19] Withdrawal of Critical Civil Rights Guidance Statement at 2.

[20] *See, e.g.,* Order Approving Consent Decree & Consent Decree, *United States v. Rhode Island*, No. 1:14-cv-00175 (D.R.I. April 9, 2014), https://www.ada.gov/olmstead/olmstead_cases_list2.htm#louisiana; United States of America's Motion to Intervene, Lane v. Kitzhaber, No. 3:12-cv-00138-ST (D. Ore. Mar. 27, 2013); Settlement Agreement, Lane v. Brown (formerly Lane v. Kitzhaber), No. 3:12-cv-00138-ST (D. Ore. Sept. 8, 2015), approved by U.S. Magistrate Judge Janice Stewart (Dec. 29, 2018); *and see* Independent Reviewer, 2016 Report to the Court, *Lane v. Brown* (Jan. 1 – Dec. 31, 2016), https://www.ada.gov/olmstead/olmstead_cases_list2.htm#louisiana; U.S. Dep't. of Justice, Civil Rights Division, Presentation: Department of Justice Olmstead Enforcement: Advisory Committee on Increasing Competitive Integrated Employment for Individuals with Disabilities, *passim.* (Jan. 23, 2015), https://www.dol.gov/odep/topics/date/SheilaForan.pdf. *See also* U.S. Commission on Civil Rights, Subminimum Wages: Impacts on the Civil Rights of People with Disabilities, Sept. 2020, p. 127 (hereinafter "Subminimum Wages"), https://www.usccr.gov/files/2020-09-17-Subminimum-Wages-Report.pdf.

[21] Subminimum Wages at 128.

[22] Ibid., 129-30.

Withdrawing these guidance documents – without sharing replacement guidance addressing these civil rights issues – runs directly counter to the Commission's recommendation that the Department continue to promote core principles identified through its Dear Colleague letters and in so doing harms the public.

DOJ's Assistant Attorney General for Civil Rights is charged to coordinate the federal enforcement of all statutes that prohibit discrimination against protected classes by federal agencies and funding recipients.[23] Notably, the budget requests DOJ has submitted for its Civil Rights Division during Fiscal Years 2017 through 2019 have changed prior language describing Division priorities, deleting in these more recent submissions prior reference to "ensuring constitutional policing and advancing criminal justice reform," as well as to protecting the rights of people with disabilities and protecting LGBT individuals from discrimination, harassment, and violence.[24]

In particular, DOJ has both taken affirmative steps to – wrongly – interpret sex discrimination laws not to protect gender identity and in addition failed to coordinate federal civil rights agency enforcement and regulatory efforts to comply with the law as interpreted by our nation's courts.[25] DOJ's efforts in this area contrast starkly with the United States Supreme Court's recent holding in *Bostock v. Clayton County, Georgia* that, as the Court put it, "it is impossible to discriminate against a person for being homosexual or transgender without discriminating against the individual based on sex."[26] DOJ persists in this area to, in the Supreme Court's words, "ignore the law as it is," directly contrary to the Court's direction and DOJ's own civil rights coordination role.[27]

Voting Rights

In 2018, the Commission reported on the status of voter access and voting discrimination in the United States and of the efficacy of DOJ enforcement of the Voting Rights Act (VRA) since

[23] 28 C.F.R. § 0.50(e) (tasking the Civil Rights Division's Assistant Attorney General with "consultation with and assistance to other Federal departments and agencies and State and local agencies on matter affective civil rights"); *see also* U.S. Dep't of Justice, Title VI Legal Manual (updated Mar. 18, 2019) § III, Department of Justice Role Under Title VI, https://www.justice.gov/crt/fcs/T6manual (describing DOJ and other agencies' role in issuing guidance and regulations, review applications for federal funding, monitor compliance, and enforce civil rights laws against recipients), *see also* Are Rights A Reality at 56.

[24] Are Rights A Reality at 82.

[25] Are Rights A Reality at 501; *see also* U.S. Commission on Civil Rights, Working for Inclusion: Time for Congress to Enact Federal Legislation to Address Workplace Discrimination Against Lesbian, Gay, Bisexual, and Transgender Americans, Nov. 2017, p. 72, https://www.usccr.gov/pubs/docs/LGBT_Employment_Discrimination2017.pdf.

[26] *Bostock v. Clayton County, Georgia*, 590 U.S. __, __, slip. op. at 9 (2020); *see also* U.S. Commission on Civil Rights, "U.S. Commission on Civil Rights Calls on Trump Administration to Revise Regulations and Enforcement Practices to Recognize Civil Rights Protections for LGBT Americans and Comply with the *Bostock* Decision," Jun. 19, 2020, https://www.usccr.gov/files/2020-06-19-USCCR-Calls-for-Changes-Post-Bostock.pdf.

[27] *Bostock*, 590 U.S. at __, slip op. at 16.

Congress' 2006 Reauthorization and in particular, since the Supreme Court's June 2013 decision in *Shelby v. Holder*.[28] The conclusions the report drew were bleak, leading to unanimous Commission findings, including that:

- Race discrimination in voting has been pernicious and endures today.
- Voter access issues and discrimination continue today for voters with disabilities and limited English proficient voters.
- The right to vote, which is a bedrock of American democracy, has proven fragile and in need of robust statutory protection in addition to Constitutional protection.
- Following the Supreme Court's decision in *Shelby County*, in the absence of the preclearance protections of Section 5 of the Voting Rights Act, voters in jurisdictions with long histories of voting discrimination have faced discriminatory voting measures that could not be stopped prior to elections because of the cost, complexity and time limitations of the remaining statutory tools.[29]
- The *Shelby County* decision had the practical effect of signaling a loss of federal supervision in voting rights enforcement to states and local jurisdictions.[30]

Notwithstanding the recurrence of this ongoing discrimination in voting, the report showed that DOJ enforcement lags behind even available tools. Whereas the DOJ has statutory authority to enforce VRA and congressional appropriations annually to staff such enforcement, the DOJ's actual enforcement work in this area lags well behind private enforcement that is much more expensive and onerous to mount.[31]

Our September 2018 report found that since the *Shelby County* decision in 2013, the DOJ had filed only four of the 61 Section 2 cases filed, one language access case, and zero cases about the right to assistance in voting.[32] The ACLU alone has brought more Section 2 cases than the DOJ;[33] so has the Lawyers' Committee for Civil Rights Under Law.[34] The DOJ has shown a sharp decline in the number of language access cases it has filed, filing only one such case since

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[28] U.S. Commission on Civil Rights, An Assessment of Minority Voting Rights Access in the United States, Sept. 2018, https://www.usccr.gov/pubs/2018/Minority_Voting_Access_2018.pdf (hereinafter "Voting Rights").

[29] Ibid., 12-13.

[30] Ibid., 12, 279.

[31] Ibid., 254-56.

[32] Ibid., 10. The Section 2 cases were filed in 2013 and 2017 and the language access case in 2016. Ibid., 253, 259.

[33] Ibid., 80, 265.

[34] Ibid., 265.

the *Shelby County* decision, while the need for language access protections has not abated.[35] The DOJ has not filed any cases to enforce Section 208 of the VRA, which provides for voters' rights to assistance, including for voters with disabilities and limited-English proficiency, since 2009.[36]

Our 2018 assessment of course predated the novel coronavirus pandemic that we now live with. As the Commission majority recognized in March, there are specific additional civil rights risks associated with the rise of the pandemic.[37] The nation has suffered pronounced racial disparities in deaths due to coronavirus.[38] The Commission's Indiana Advisory Committee advised that "History shows that presidential elections always generate the highest levels of voter turnout, which increases the likelihood that there will be large crowds of people gathering in polling places all across the state."[39] The Indiana Advisory Committee called on their state to expand absentee voting to be available to all voters in the state. Similarly Loyola University law professor Justin Levitt submitted to the Commission: "whatever the underlying causes, the fact remains that minority communities are more at risk from COVID-19. Congregating in groups can be life-threatening for anyone in a pandemic. For minority citizens, the risks are even greater."[40]

Ilya Shapiro of the Cato Institute and Dan Morenoff of the Equal Voting Rights Institute each submitted testimony to the Commission, agreeing with the need for expanding absentee ballot access this year given the health risks presented by COVID-19. Significantly, while they expressed some concerns about increased risk of voter fraud with regard to third-party ballot collection,[41] they also acknowledged that incidents of voter fraud in absentee voting are exceedingly rare (less than 0.00006% of a Heritage Foundation database of allegations).[42]

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[35] Ibid., 259.

[36] Ibid., 260-62.

[37] U.S. Commission on Civil Rights, "U.S. Commission on Civil Rights Urges Federal Agencies to Vigilantly Enforce Civil Rights Laws During and in the Wake of the COVID-19 Crisis," Apr. 17, 2020, https://www.usccr.gov/press/2020/04-17-Statement-on-Coronavirus-Federal-Guidance.pdf.

[38] Ibid., 6.

[39] Indiana Advisory Committee to the U.S. Commission on Civil Rights, "Indiana Advisory Committee to the U.S. Commission on Civil Rights Urges Adoption of No-Excuse Absentee Voting in Upcoming Election," Jul. 22, 2020, p. 2, https://www.usccr.gov/files/2020-07-22-Indiana-SAC-statement-on-voting-rights.pdf.

[40] Justin Levitt, Professor, Loyola Law School, Written Statement for Minority Voting Rights Access Update before the U.S. Commission on Civil Rights, Jul. 1, 2020, p. 3, https://securisync.intermedia.net/us2/s/2n8deuGPiijceQXIrch5zS0011ef58.

[41] Ilya Shapiro, Director and James T. Knight II, Legal Associate, Robert A. Levy Center for Constitutional Studies, Cato Institute, Written Statement for Minority Voting Rights Access Update before the U.S. Commission on Civil Rights, Jun. 29, 2020, p. 1, https://securisync.intermedia.net/us2/s/2n8deuGPiijceQXIrch5zS0011ef58 (hereinafter "Shapiro Statement"); Dan Morenoff, Executive Director, The Equal Voting Rights Institute, Written Statement for Minority Voting Rights Access Update before the U.S. Commission on Civil Rights, Jul. 8, 2020, pp. 1-3, https://securisync.intermedia.net/us2/s/2n8deuGPiijceQXIrch5zS0011ef58 (hereinafter "Morenoff Statement").

[42] Shapiro Statement at 3; Morenoff Statement at 3.

The Commission also received substantial testimony about the need for safe in-person voting options to preserve access for voters with disabilities and voters who require language assistance. Clark Rachfal of the American Council of the Blind pointed out that changes to voting processes implemented in response to COVID-19 "impose serious barriers to voting privately and independently for people who are blind and visually impaired."[43] Michelle Bishop of the National Disability Rights Network pointed out that "curbside voting may be used as a stop gap measure for voters with disabilities to cast their ballots until an inaccessible polling place can be brought into compliance with the ADA."[44] Indeed, this particular measure has, in previous Administrations, been included in "accessibility settlements and memoranda of agreements between the U.S. Department of Justice and individual voting jurisdictions."[45] Jerry Vattamala of the Asian American Legal Defense and Education Fund submitted testimony to the Commission that jurisdictions covered under Section 203 of the Voting Rights Act, which requires particular jurisdictions to provide language assistance, have failed to fulfill their obligations to provide translated written materials and access to interpreters.[46]

But in the face of these dire concerns about American citizens' ability to practice that most essential, core function of our democracy in casting a ballot, the Commission received testimony that the Trump Administration has been largely absent from enforcement that protects and ensures voter access.[47]

As the House Committee on Administration's Subcommittee on Elections points out, we do not even have a Department of Justice "that argues cases on behalf of the voter."[48]

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[43] Clark Rachfal, Director of Advocacy and Governmental Affairs, American Council of the Blind, Written Statement for Minority Voting Rights Access Update before the U.S. Commission on Civil Rights, Jul. 1, 2020, p. 1, https://securisync.intermedia.net/us2/s/2n8deuGPiijceQXIrch5zS0011ef58.

[44] Michelle Bishop, Voting Rights Specialist, National Disability Rights Network, Written Statement for Minority Voting Rights Access Update before the U.S. Commission on Civil Rights, p. 4, https://securisync.intermedia.net/us2/s/2n8deuGPiijceQXIrch5zS0011ef58.

[45] Ibid., 4-5.

[46] Jerry Vattamala, Director, Democracy Program, Asian American Legal Defense and Education Fund (AALDEF), Written Statement for Minority Voting Rights Access Update before the U.S. Commission on Civil Rights, Jul. 1, 2020, pp. 2-3, https://securisync.intermedia.net/us2/s/2n8deuGPiijceQXIrch5zS0011ef58.

[47] U.S. Committee on House Administration, Subcommittee on Elections, Report on Voting Rights and Election Administration in the United States of America, p. 111 (submitted by Chair Marcia L. Fudge, Subcommittee on Elections, Committee on House Administration, for Minority Voting Rights Access Update before the U.S. Commission on Civil Rights, July 1, 2020), https://securisync.intermedia.net/us2/s/2n8deuGPiijceQXIrch5zS0011ef58.

[48] Ibid., 138.

Policing Practices

Several uses of deadly force against Black civilians earlier this year underscore an ongoing need for federal leadership in enforcement against unconstitutional policing practices to protect civil rights. Yet, as the Commission unanimously recognized last June, in the current Administration the U.S. Department of Justice has taken the public position that it would significantly curtail policing investigations,[49] and has followed through in that reduction.[50]

The Commission acknowledges the Department of Justice's decision to initiate a criminal investigation into the death of George Floyd in Minneapolis, Minnesota,[51] a use of deadly force that has been widely criticized by law enforcement leaders.[52] Opening a criminal investigation is separate and apart from and does not address the Civil Rights Division's authority to open pattern or practice investigations; as discussed below, this pattern or practice investigative authority is a powerful, effective tool that DOJ has not been using. The Commission remains concerned that DOJ has curtailed its activity in this area, which in turn, has directly undermined public trust in the federal commitment to constitutional policing practices and to ensuring nondiscrimination in police use of force.[53] The Commission unanimously urges vigorous federal enforcement of civil rights laws that protect Americans from unconstitutional policing practices.

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[49] U.S. Commission on Civil Rights, "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," Jun. 5, 2020 (hereinafter "Enforce Policing Practices Statement"), https://www.usccr.gov/press/2020/06-05-Pattern-or-Practice-Statement.pdf (citing 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, Nov. 2018, pp. 88-90 (hereinafter "Police Use of Force"), https://www.usccr.gov/pubs/2018/11-15-Police-Force.pdf; *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.

[50] Enforce Policing Practices Statement at 1 (citing Are Rights A Reality at 119).

[51] Enforce Policing Practices Statement at 1, n. 3 (citing 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)).

[52] 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.

[53] Are Rights A Reality at 93.

The U.S. Attorney General is authorized to "investigate and litigate cases involving a 'pattern or practice of conduct by law enforcement officer' that violates Constitutional or federal rights."[54] 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.[55] After making its findings and conclusions, the Division can negotiate reforms, sometimes in the form of a consent decree, overseen by a federal court and an independent monitor.[56] 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.[57] The report also noted a decrease in reports of non-lethal police use of force,[58] and police use of force citizen complaints.[59]

Since 1994, DOJ has opened seventy pattern or practice investigations, of which, forty-one resulted in a consent decree or other settlement agreement.[60] Nineteen of these decrees were still actively being implemented as of April 2017.[61] Under this Administration, the DOJ has abandoned pattern or practice investigations, criticized pattern or practice policing investigations as a tool, and refused to initiate new investigations and curtailed the use of consent decrees.[62] They have also diminished the use of the DOJ Office of Community Oriented Policing 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.[63]

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[54] 42 U.S.C. § 14141 (recodified as 34 U.S.C. § 12601); *see also* Civil Rights Division, U.S. Department of Justice, The Civil Rights Division's Pattern and Practice Police Reform Work: 1994-Present, 3 (2017), https://www.justice.gov/crt/file/922421/download (hereinafter "Pattern and Practice Police Reform Work").

[55] Pattern and Practice Police Reform Work at 1.

[56] Ibid.

[57] Police Use of Force at 88-89.

[58] Ibid., 92.

[59] Ibid., 75.

[60] 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/.

[61] Ibid.

[62] Memorandum from the Att'y Gen. to Heads of Civ. Litigating Components and United States Att'ys (Nov. 7, 2018) (on file with the Commission); *see also* Police Use of Force at 88.

[63] *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.

As police leaders generally recognize, fostering community trust, positive community relations and cooperation are essential for law enforcement to effectively discharge its public safety duty. Yet the Department has failed to use the full measure of its authority to conduct investigations into these cases, and to bring enforcement actions if appropriate to prevent these events and other systemic deprivations of constitutional rights from occurring.[64]

Conclusion

For over six decades the Department of Justice has been statutorily obligated to enforce civil rights laws. Today it fails in that promise. Americans need the Department of Justice to live up to its name. The extraordinary volume of complaints that continue to be filed with federal civil rights agencies coupled with findings of discrimination and resolutions from federal agencies underscore the reality that, today, the nation still has not reached a time when recognition of and protection for core civil rights promises is the norm for all Americans. The Department of Justice must adopt effective practices to fulfill its mission to coordinate and ensure federal civil rights enforcement.

[64] *See* Police Use of Force 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.