

TESTIMONY OF VANITA GUPTA

*Senate Subcommittee on Oversight, Agency Action, Federal Rights and Federal Courts
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Introduction

Chairman Cruz, Ranking Member Coons, and distinguished Members of the Committee – the Department of Justice (the Department or DOJ) greatly appreciates the opportunity to participate in today’s hearing.

Our nation’s police, sheriffs and other law enforcement officers are dedicated public servants who provide invaluable service to our nation. They deserve our highest praise for keeping our neighborhoods safe, our families secure, and dangerous criminals behind bars. It is critical that they have the tools and support they need to do their jobs effectively and safely. For this reason, building on her years of experience as a prosecutor, Attorney General Lynch has made support for state and local law enforcement among her highest priorities.

DOJ invests substantial resources to support police, sheriffs and other law enforcement agencies around the country – to advance effective policing, ensure officer and public safety, and bolster trust between law enforcement and the communities. The Department employs a variety of tools toward these ends, including funding, equipment, training, technical assistance, and enforcement actions.

Supporting State and Local Law Enforcement with Funding for New Officers, Equipment, Training, Convenings, and Research

[See written statement of Ronald L. Davis]

The Department supports state and local law enforcement agencies by providing them funding and resources to aid them in protecting their communities.

Since 2009, the Department has awarded over \$2 billion in local grants through its Office of Community Oriented Policing Services (COPS). These funds have created or preserved positions for more than 10,000 officers at nearly 2,600 agencies. Nearly half of these positions were funded through \$1 billion in economic stimulus funding designed to save jobs during the economic downturn. In the last fiscal year alone, COPS awarded more than \$113 million in grants to hire or save 915 officer positions.

For Fiscal Year 2016, the Administration has requested an additional \$303 million for the COPS Office to continue the important mission of advancing public safety through community policing. In recent comments before the International Association of Chiefs of Police, the President reiterated his commitment to law enforcement by increasing funding for the COPS Office. The President told the more than 14,000 law enforcement officers in attendance that he

has asked Congress “to increase funding for the COPS program so we can hire even more police officers and make sure you have the training and equipment you need. That’s what I value.”

The Department’s Office of Justice Programs (OJP) has also invested heavily in supporting local policing, particularly through the work of the Bureau of Justice Assistance (BJA). The State and Local Law Enforcement Assistance appropriation, which funds BJA’s programs, provides over \$1.1 billion per year for a variety of state and local criminal justice needs. BJA has trained over 21,300 officers through its VALOR program, launched in 2010 in response to attacks against officers in the line of duty. Every line of duty death is tragic. The VALOR program aims to save lives by helping officers to identify armed subjects, recognize emerging threats, and de-escalate potentially violent encounters. It also addresses law enforcement wellness issues that directly impact an officer’s safety. Additionally, a partnership under the VALOR program, the Advanced Law Enforcement Rapid Response Training (ALERRT) program, has provided active-shooter training for approximately 70,000 officers with BJA’s support since 2002. Since 1999 the Bulletproof Vest Partnership has provided more than 1.2 million vests to law enforcement officers and personnel. OJP’s National Institute of Justice (NIJ) continues to improve the equipment performance standard and compliance testing program to help ensure that the vest worn by the men and women of law enforcement perform as needed. Modern police body armor is credited with saving over 3,100 officers lives, since it was introduced into practice as the result of NIJ-funded research in 1975. The BJA-funded Blue Courage program provides support and continuing education to law enforcement officers on a range of topics, including judgment, integrity, leadership, and stress management. During the last fiscal year, it served more than 2,200 officers from 358 agencies.

BJA has funded important new technology, awarding more than \$23.2 million in grants to 73 local and tribal agencies across 32 states this past September to expand and study the use of body-worn cameras in support of the Administration’s Community Policing Initiative. BJA also produced a much-needed toolkit on body-worn cameras, to assist local agencies in implementing the new technology in a way that enhances officer and public safety and strengthens relationships between law enforcement personnel and community members. Furthermore, BJA supports 45 sites through its Smart Policing Initiative, a program that brings together law enforcement leaders and researchers to employ evidence-based practices that target local crime challenges.

Promoting Effective Policing and Meaningful Reform Where Trust Has Eroded or Problems Exist

Addressing mistrust that exists between the police and the communities they serve is vital to advancing public safety. Mistrust breaks down collaboration, impedes the sharing of information, leads to less effective policing, and ultimately can put officer safety and the community at risk. Given the unprecedented national conversation around policing today, the Department views this moment as an important opportunity to collaborate and achieve meaningful, lasting reform.

In addition to providing officers with the resources they deserve, as previously mentioned, the Department also has an array of other tools at its disposal to use where trust has eroded between law enforcement officers and the communities they serve. These tools—ranging

from data-driven assessment and targeted interventions to in-depth investigations—are means toward the same principal goal: ensuring strong communities where officers and residents work together to combat crime consistent with shared values. And in deploying these tools, DOJ ensures that there is appropriate communication and coordination among each of its relevant components.

[See written statement of Ronald L. Davis]

There are also occasions in which the proper federal role is to conduct investigations into officer conduct. The Department’s Civil Rights Division (the Division) has longstanding authority to investigate individual officers for potential criminal violations of constitutional rights. In addition, in 1994, partly as a response to concerns surfaced after the 1992 Los Angeles riots, Congress charged the Division with the responsibility to investigate law enforcement agencies for a pattern or practice of misconduct, such as excessive force and discriminatory policing, and to develop remedies to eliminate such misconduct where it is found.¹ Eliminating patterns or practices of unlawful conduct—many of which took years to develop—cannot be done overnight, and we must aim for these remedies to be sustainable. This requires intense and concerted effort: better training, closer supervision, and more positive, constructive community engagement.

As Congress recognized in creating these statutory authorities, the power of law enforcement to restrict liberty and, at times, use deadly force must be exercised in accordance with the Constitution. In each of these enforcement contexts, the Department aims to promote effective and accountable policing that is consistent with the law and responsive to community needs.

In its criminal enforcement, the Division is committed to impartial, fact-driven investigations of individual officers for federal offenses, such as assaults, thefts, and sexual assaults committed under color of law. This means pursuing prosecution when the evidence supports it, as in the case of a Hawaii police officer who, without provocation, kicked a civilian in the head and then threw a metal stool at him, before subsequently filing a false report about the incident. It also means closing investigations when the evidence does not support charges. For example, the Department closed criminal investigations into the deaths of Michael Brown in Ferguson, Missouri; Dontre Hamilton in Milwaukee, Wisconsin; and Anastasio Hernandez-Rojas in San Diego, California. We declined prosecutions in each of those cases because the evidence did not indicate that the law enforcement officials had violated federal criminal civil rights laws or other federal laws. In each of those cases, we explained our decision publicly and closed the cases. In every single case, our objectivity is paramount, and particularly valued where communities may lack trust in local officials.

Thus, criminal enforcement is an important tool focusing on individual criminal liability. Where the Division identifies a pattern or practice of unconstitutional policing, it relies on its civil authority to seek systemic reform. Often, jurisdictions recognize their need for assistance and invite the Division to conduct an investigation— as has been the case recently in Baltimore,

¹ 42 U.S.C. § 14141

Newark, New Orleans, Cleveland, and Miami. In Baltimore, for example, the mayor, police chief, and union president all called for or publicly supported the Division's investigation.

When the Division identifies a pattern or practice of conduct that violates civil rights, it has the statutory authority to sue to remedy the unlawful conduct—although the Division always seeks to reach an agreement with the local jurisdiction that implements the necessary reforms. In all cases in this Administration, the Department publishes its findings.

In our civil investigations we speak directly with police commanders, union representatives, and line officers; attend roll calls and participate in ride-alongs; and learn first-hand what challenges officers face and what changes they think necessary. Often, these individuals report a lack of adequate support, training, policy guidance, supervision, and even equipment to keep themselves, and their communities, safe. These investigations also involve comprehensive engagement with community members. Division investigators conduct often hundreds of interviews, host town hall meetings, and meet with residents in their neighborhoods. And where the Division finds a pattern or practice of unlawful conduct, it relies on the input of community members and officers themselves in crafting proposed remedies.

The Department is currently enforcing 16 agreements with law enforcement agencies, including 13 consent decrees. Since 2009, the Civil Rights Division has opened 23 investigations into police departments. The Department does not always find constitutional violations. In the past six years, the Department has concluded six investigations of law enforcement agencies without finding constitutional violations.

Throughout our investigation and reform efforts, the Division works directly with experts in the field—including current and former police chiefs. In addition to assisting with incident analysis and data analysis, these experts participate in site visits and communicate directly with local officers, providing them real-time technical assistance. They also assist us in devising remedies for identified problems, based on their experience and knowledge of best practices, appropriately tailored to the jurisdiction's particular needs. In addition, during the pendency of pattern-or-practice investigations, DOJ provides real-time technical assistance through COPS and other components.

The Division's pattern-or-practice work has helped local law enforcement agencies enhance their public safety efforts and strengthen their relationship with their communities. In Portland, Oregon, for example, two years after we identified an institutional pattern of excessive force against people with mental illness, we have worked with the police department to retrain officers and strengthen accountability measures. As a result, officers and the community are safer and the use of force has declined dramatically. In Seattle, where we identified similar problems, the police department has embraced change. As a result of improvements to policy and training, the police department recently reported that officers used force in less than 2% of encounters with people with mental illness, of which there were almost 2,500 in a three-month period earlier this year. This is down from the 70% figure reported by the police department in 2011.

In Los Angeles, independent researchers found that our consent decree helped increase community trust in the police department. “The quality of service to residents is higher, the perception of the LAPD as fair has risen, and the use of force is down,” they wrote.² In East Haven, Connecticut, where we documented a pattern of biased policing and entered into a consent decree three years ago, residents are reporting significantly improved relations with their police department.³ And in just two years, pursuant to a memorandum of agreement that resulted from a pattern-or-practice investigation, the Missoula, Montana, Police Department and University of Missoula Police Department have become models of how law enforcement agencies should respond to allegations of sexual assault. Data collection required by our agreements there indicate that while incidents of sexual assault have remained the same, reporting is up, victims of sexual assault report feeling that the police response helped, rather than re-traumatized them, and officers feel better about their work and their contributions to making the entire community safer. Due to the swift progress of these agencies, we closed both cases earlier this year.

Key Principles in DOJ’s Approach to Effective Policing and Building Trust

[See written statement of Ronald L. Davis]

Whether through the work of the Diagnostic Center, the Civil Rights Division’s enforcement actions, or the COPS Office’s comprehensive technical assistance, the Department has identified a series of principles and practices that promote effective, constitutional policing and increase trust between law enforcement and the community. These are consistent with best practices advanced by professional organizations like the Police Executive Research Forum (PERF), the International Association of Chiefs of Police (IACP), and the Major City Chiefs Association (MCCA).

They are also consistent with the work of the President’s landmark Task Force on 21st Century Policing, a diverse group of law enforcement experts, individual rights advocates, and community leaders tasked with developing recommendations to strengthen trust and reduce crime. In May, the Task Force, staffed by the COPS office, provided its final report to the president, issuing 59 specific recommendations and action items focused on six primary pillars: building trust and legitimacy, policy and oversight, technology and social media, community policing and crime reduction, training and education, and officer wellness and safety.⁴ The Task

² Christopher Stone, Todd Foglesong & Christine M. Cole, *Policing Los Angeles Under a Consent Decree: The Dynamics of Change at the LAPD*, May 2009, at 1, available at http://www.hks.harvard.edu/var/ezp_site/storage/fckeditor/file/pdfs/centers-programs/programs/criminal-justice/Harvard_LAPD_Report.pdf (last visited Nov. 8, 2015).

³ Esteban L. Hernandez, *Latinos in East Haven Applaud Police Efforts to Heal Community*, New Haven Register, Feb. 7, 2015, available at <http://www.nhregister.com/article/NH/20150207/NEWS/150209600> (last visited Nov. 8, 2015).

⁴ http://www.cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf

Force made clear that only a multi-faceted approach, shaped by committed engagement from police officers and residents alike, can achieve meaningful reform.

Federal Law Enforcement Agencies

The Department's law enforcement components, including ATF, FBI, DEA, and USMS, are also involved in assisting and supporting state and local officials to address key crime and public safety initiatives. For example, these DOJ agencies were recently embedded with the Baltimore Police Department (BPD), and along with the support of US Attorney Rod Rosenstein, created a task force working in the Homicide Section to help solve 2015 homicides and reduce crime by leveraging federal resources such as crime labs, gun tracing capabilities, and technology.

Since the inception of the FBI's Safe Streets Violent Crime Initiative in 1992, Safe Streets Task Forces, a partnership between federal law enforcement and state and local agencies, have been and continue to be at the forefront of the FBI's campaign against violent gangs and violent crimes throughout the nation. The success of this initiative has been predicated on their ability to apply short-term reactive strategies with long-term sophisticated techniques while cooperating in a task force environment with other federal, state and local counterparts. Through the efficient use of the Enterprise Theory of Investigation, Safe Streets Task Forces pursue violent gangs and violent crime through sustained, multi-jurisdictional, coordinated investigations that support prosecutions under United States Code, Titles 18 and 21, including violations such as racketeering, Hobbs Act (commercial robberies), drug conspiracy and firearm violations. Currently, there are 164 Safe Streets Violent Gang Task Forces, 45 Safe Streets Violent Crime Task Forces and 15 Safe Trails Task Forces.

In addition, the Civil Rights Division and FBI work closely with state and local law enforcement in investigating hate crimes, human trafficking, and crimes committed under color of law throughout the United States.

Conclusion

State and local law enforcement agencies carry out their selfless responsibilities with professionalism, integrity, and uncommon valor. The Department is committed to using its resources and expertise to support them—in their vital efforts to protect the public, in safeguarding individuals' constitutional rights, and in building strong relationships with community members.

The Department looks forward to continuing to collaborate with the distinguished Members of this Committee and this Congress. Thank you, Mr. Chairman, once again, for providing Department of Justice officials with an opportunity to testify this afternoon. We look forward to your questions.