

**BUILDING TRUST AND LEGITIMACY:
LISTENING SESSION BEFORE THE PRESIDENT’S TASK FORCE
ON 21ST CENTURY POLICING**

**PUBLIC COMMENT OF THE CENTER FOR CONSTITUTIONAL RIGHTS
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Task Force Members:

The Center for Constitutional Rights (CCR) would like to thank the Task Force on 21st Century Policing for holding this important listening session on “Building Trust & Legitimacy.” This session comes at a critical moment and during an intense national debate on police violence, brutality and racial justice.

CCR is dedicated to advancing and protecting the rights guaranteed by the U.S. Constitution and the Universal Declaration of Human Rights. Founded in 1966 by attorneys who represented civil rights movements in the South, CCR is a non-profit legal and educational organization committed to the creative use of law as a positive force for social change. We have also successfully challenged unlawful and discriminatory policing practices in our advocacy, movement support and litigation work in New York, Ferguson and beyond.ⁱ

CCR welcomes the Task Force’s engagement on what we see as a timely and necessary conversation on the future of policing, and we appreciate the opportunity to provide recommendations for reconciliation, trust-building and reform of policing practices and culture to better promote respect and dignity for the communities that police departments serve.

I. NEW YORK: A CLOSER LOOK

CCR would like to draw your attention to what we believe is a critical moment and opportunity for reform of the practices of the largestⁱⁱ and most influential municipal police department in the country – the New York Police Department (“NYPD” or “the Department”).ⁱⁱⁱ Below we highlight recent developments as well as continued areas of concern.

a. Stops and Frisks

As the Task Force is likely well aware, between January 2004 and June 2012, the NYPD conducted over 4.4 million forcible pedestrian stops of New Yorkers, the vast majority of which, roughly 85%, were Black or Latino, even though these two groups represented only 52% of New York City's population. These statistics, obtained by to us through a court order, raised serious concerns about the discriminatory impact of this practice. Only approximately 10% of stops led to any further law enforcement action,^{iv} which raised concerns about its efficacy as well.

CCR successfully challenged the NYPD's abusive stop and frisk practices in *Floyd v. the City of New York*,^v as violations of the Fourth and Fourteenth Amendments of the U.S. Constitution. In August 2013, the United States District Court for the Southern District of New York found the NYPD liable for a widespread practice of unconstitutional and racially discriminatory stops.^{vi}

i. Court-Ordered Collaborative Process and Reforms Represent an Opportunity to Rebuild Trust, Collaboration and End Discriminatory Policing

Following its ruling, the Court ordered the appointment of an independent monitor and facilitator to oversee a collaborative reform process, based upon a similar process which was successfully implemented in Cincinnati, Ohio over a decade ago. The collaborative process brings together affected communities, elected officials, police officer organizations, the *Floyd* plaintiffs, the NYPD, and other stakeholders to collaboratively develop specific reforms to the Department's stop and frisk practices.^{vii} Community groups, labor organizations, elected officials and representatives of law enforcement officers of color organizations have declared their support for the reform process. Leading this process would be the monitor and facilitator who will ensure that reforms are developed in a timely fashion and then fully implemented by the Department.

We also believe that the collaborative process that is set to begin in New York will, as did the Cincinnati reform process before it, serve as a model to develop meaningful, lasting and credible reforms to municipal police departments across the country. Similar processes have been effective in reducing crime and police-involved shooting deaths, significantly improving relationships between police departments and the communities they police, and bringing discriminatory and other abusive law enforcement policies and practices into compliance with the law. We encourage the Task Force's endorsement of the collaborative process in New York moving forward.

Moreover, the NYPD was ordered to adopt "immediate reform" of policies concerning supervision, monitoring, training and discipline of officers related to stop-and-frisk and racial profiling. The details of these policy changes are to be developed by the Monitor in consultation with the lawyers representing the City and the Floyd plaintiffs, who will then submit them to the District Court as soon as possible for approval.

The Court also ordered the NYPD to institute a "pilot project" in which body-worn cameras are to be worn for one year by officers on patrol in the one precinct in each borough with the highest number of stops in 2012. In anticipation of this court-ordered pilot, the City of New York has on its own started outfitting a total of 54 officers, 9 in each of the aforementioned precincts and in

one housing police service area, who have volunteered to wear the body cameras, as a way to test the technology before launch of the larger court-ordered pilot program. Importantly, this initial NYPD voluntary pilot does not replace the formally court-ordered pilot which will have protocols developed primarily by the Monitor in consultation with the City and Floyd plaintiffs, is mandatory, and will include a formal process for evaluating the effectiveness of the cameras at reducing unconstitutional police behavior.

b. Targeting of Arab, Muslim and South Asian Communities

Of equal concern to CCR and others in the New York police accountability community is another longstanding and overtly discriminatory NYPD policy and practice: the targeting of Arab, Muslim, and South Asian individuals, businesses, places of worship and entire neighborhoods for surveillance and “infiltration” — without any suspicion of criminal wrongdoing. The NYPD’s surveillance program (hereinafter “Program”) involves “human mapping” and mass surveillance of Muslim communities, and infiltration of mosques and Muslim student associations in the New York and New Jersey area. The Program expressly discriminates on the basis of religion and violates the U.S. Constitution. Notably, after more than a decade in existence, the Program has not yielded a single criminal lead,^{viii} and has had serious negative consequences for the lives of those in Muslim communities: altering the way they practice their faith and interact with other community members, and creating a pervasive climate of fear, suspicion and stigmatization. The Program has been the subject of several legal challenges, including one filed by Muslim Advocates and CCR on behalf of Muslim communities in New Jersey, which is being heard Tuesday, January 13th by the United States Court of Appeals for the Third Circuit in Philadelphia.^{ix}

c. Excessive Use of Force and Inadequate Disciplinary Systems

Additionally, excessive use of force by police continues to be a problem in New York, particularly in communities of color. Black people represent 55% of all alleged victims in civilian complaints received by the New York City Civilian Complaint Review Board (CCRB); another 24-27% is Hispanic.^x Of all the complaints received by the CCRB, nearly half concern excessive or unnecessary use of force by the NYPD.^{xi}

Furthermore, the existing disciplinary policies and procedures of the NYPD routinely fail to meaningfully punish and deter officers who are found to have committed misconduct, and rarely in proportion with the misconduct in question.^{xii} While we are encouraged by Attorney General Holder’s announcement of a civil rights investigation by the Department of Justice into the killing of Eric Garner, we would also strongly urge a reconsideration of existing internal departmental disciplinary policies and procedures which fail to hold officers accountable when they engage in misconduct, thereby perpetuating a culture of impunity within the NYPD.

d. Failures to Indict and hold Accountable: When Officers Kill

Repeat failures to criminally prosecute officers who engage in brutality through grand jury indictments,^{xiii} and the recent immunity granted by the Richmond County District Attorney (Staten Island) during the grand jury process to several of the NYPD officers who participated in

the incident that resulted in the killing of Eric Garner – demonstrate a worrying lack of accountability or consequence for police misconduct.

There is a compelling need to independently investigate and prosecute incidents of lethal police violence. We believe New York Governor Cuomo should authorize New York State Attorney General Eric Schneiderman’s call for his office to be granted the power to independently investigate lethal police violence. Such independence would be imperative in holding police accountable for their actions and help foster justice to the families of those killed, as well as help to deter future police violence.

II. RECOMMENDATIONS

In the wake of the senseless execution of NYPD officers Wenjian Liu and Rafael Ramos, we note with great dismay the divisive attempts by police union leadership to exploit this tragedy and to blame New York City Mayor Bill deBlasio and, demonize the peaceful #BlackLivesMatter movement (which has demanded nothing more than justice, dignity and respect for all) and recent reports of deliberate work slowdowns by NYPD rank-and-file officers. We also note that respect is a two-way street and reckless blame-shifting by the police union will not serve this important national moment in which we need to recalibrate the relationship between police departments and the communities they are sworn to protect and serve. We believe the following recommendations and steps will help foster an environment where this can occur.

We recommend the following:

- Immediate DOJ investigation into the killing of Eric Garner and Ramarley Graham;
- Independent analysis of the NYPD’s disciplinary policies and procedures and the strengthening of systems to ensure accountability;
- Passage of the Right to Know Act by the New York City Council;^{xiv}
- New York State Governor’s Veto of S7801/A9853;^{xv}
- Granting of power to New York State Attorney General to independently investigate and prosecute incidents of lethal police violence;
- Ending of aggressive and discriminatory enforcement of misdemeanor criminal and other quality of life laws, commonly known as or "broken windows" policing ; and
- Support for and meaningful engagement by all stakeholders with the collaborative reform process in *Floyd v. City of New York* .

We also would encourage the Task Force to hold additional listening sessions to provide platforms for a growing chorus of experts who are questioning the efficacy of “broken windows” policing – with its overtly discriminatory focus on over-policing communities of color and lives of low income people – and community leaders in New York who can speak to the way that this style of policing contributes to the unfair harassment of the communities they come from. Far from a minor inconvenience, this so-called “broken windows” style of policing, can lead to serious collateral consequences and, as demonstrated by the case of Eric Garner in Staten Island, New York, tragically fatal ones as well.

In addition to the foregoing New York-specific recommendations, we also would like to draw the Task Force’s attention towards areas where we must make improvement on a national level. Those include:

- Withdrawal of federal support and funding for municipal police departments who routinely engage in discriminatory practices;
- Ending the Department of Defense’s 1033 program;
- Creation of a national database by the Department of Justice to track police shootings and other incidents of brutality and excessive use of force;
- Passage of the federal End Racial Profiling Act (ERPA); and
- End local, state and federal law enforcement’s targeting of Arab, Muslim, and South Asian neighborhoods, businesses, mosques, schools, and organizations for surveillance, monitoring, and intelligence-gathering without particularized suspicion of wrongdoing.

III. CONCLUSION

The time for changing the relationship between police and community is now. Such efforts need to create systems of accountability that are effective, promote justice and fairness, and build on a culture of transparency and meaningful systems of oversight.

We encourage the continued engagement by this Task Force to help define a new vision for policing. With a fresh commitment to enable cultural change, local police departments can take strong steps towards upholding the Constitution, promoting dignity and respect, and protecting everyone’s lives.

ⁱ CCR has traveled and provided legal and advocacy support to local activists in Ferguson, Missouri and helped coordinate legal support for protesters through the Ferguson Legal Defense Committee.

ⁱⁱ The NYPD’s current uniformed strength is approximately 34,500. *See* http://www.nyc.gov/html/nypd/html/faq/faq_police.shtml

ⁱⁱⁱ *See* The Center for Constitutional Rights, *Stopped, Seized and Under Siege: U.S. Government Violations of the International Covenant on Civil and Political Rights through Abusive Stop and Frisk Practices*, September 2013, available at: <http://ccrjustice.org/learn-more/reports/stopped-seized-and-under-siege>. *See also* U.N. Human Rights Committee, Concluding observations on the fourth periodic report of the United States of America, CCPR/C/USA/CO/4, April 22, 2014, ¶ 7, available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?TreatyID=8&DocTypeID=5 (hereinafter “HRC 2014 Concluding Observations”) (criticizing practices of the NYPD)

^{iv} CCR, *Stopped, Seized and Under Siege*.

^v Learn more about *Floyd v. the City of New York* at www.ccrjustice.org/floyd.

^{vi} *See Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013) (“Liability Opinion”)

^{vii} *See Floyd v. City of New York*, 959 F. Supp. 2d 668 (S.D.N.Y. 2013) (“Remedial Opinion”)

^{viii} Adam Goldman & Matt Apuzzo, “NYPD: Muslim Spying Led to No Leads, Terror Cases,” Associated Press, August 21, 2012, available: <http://www.ap.org/Content/AP-In-The-News/2012/NYPD-Muslim-spying-led-to-no-leads-terror-cases>.

^{ix} Learn more about CCR’s case, *Hassan v. the City of New York* at <http://www.ccrjustice.org/hassan>.

^x Civilian Complaint Review Board, 2013 Annual Report, published March 14, 2014, available at: http://www.nyc.gov/html/ccrb/downloads/pdf/CCRB%20Annual_2013.pdf, page 8.

^{xi} *Id.*, pages 6-7.

^{xii} Communities United for Police Reform, *Priorities for the New NYPD Inspector General: Promoting Safety, Dignity and Rights for all New Yorkers*, June 2014, pages 9-11, available at: <http://changethenypd.org/resources/priorities-new-nypd-inspector-general-promoting-safety-dignity-and-rights-all-new-yorkers>

^{xiii} Madar, Chase, “Why It’s Impossible to Indict a Cop: It’s not just Ferguson-here’s how the system protects police,” THE NATION, November 24, 2014, available: <http://www.thenation.com/article/190937/why-its-impossible-indict-cop>

^{xiv} Communities United for Police Reform, *Right to Know Act: About the Legislation*, accessed December 5, 2014, available: <http://changethenypd.org/right-know-act>

^{xv} These bills would allow New York police unions to make police disciplinary policies subject to contract negotiations.