

October 3, 2016

The Honorable Loretta Lynch
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

The Honorable Sally Yates
Deputy Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

The Honorable Karol Mason
Assistant Attorney General
U.S. Department of Justice, OJP
810 Seventh Street, NW
Washington, DC 20531

Re: Proposed Implementation of Deaths In Custody Reporting Act (DICRA)

Dear Attorney General Lynch, Deputy Attorney General Yates, and Assistant Attorney General Mason:

The 96 undersigned national, state, and local criminal justice, civil rights, human rights, women’s rights, disability rights, immigrants’ rights, LGBTQ, faith-based, and open government organizations are writing to express concerns with the proposed implementation of the Deaths In Custody Reporting Act (DICRA). We are also writing to strongly reiterate our request¹ that the Office of Justice Programs (OJP) condition federal criminal justice grants on data collection and reporting on police-community encounters.

DICRA was enacted almost two years ago, so guidance on the law’s data collection and reporting process is welcomed. However, we have significant concerns with the proposed process published in the Federal Register.²

First, the proposal is a departure from DICRA provisions that require states receiving federal funding to report deaths in custody to the federal government. The Department of Justice is attempting to shift the data collection and reporting requirements from the states to the Bureau of Justice Statistics (BJS) by having BJS collect data on deaths in custody through its Arrest-Related Deaths (ARD) program instead of states. States and law enforcement agencies, the entities closest to the data being sought, should be responsible for collecting and reporting deaths in custody to the federal government as mandated by law.³ It will be difficult for DOJ to get an accurate picture of trends in custodial deaths if state and local law enforcement agencies are not held accountable for collecting data after a death occurs.

Second, with BJS assuming responsibility for states’ data collection and reporting, the proposal indicates that BJS will rely primarily upon publicly available information (“open-source review”) for its ARD program.⁴ This means that should The Guardian and the Washington Post decide to continue to invest in this research,⁵ those news outlets will continue to be the best national sources for data on deaths in police custody. Certain media outlets have been critical to understanding police-community encounters over the past year, but it is unlikely that national media

¹ Coalition Letter to AAG Karol Mason, *Re: Request to Condition Federal Grants on Data Collection and Reporting & Provide Regulations on Death in Custody Reporting Act*, Mar. 1, 2016, available at https://www.aclu.org/sites/default/files/field_document/data_coalition_letter_final.pdf.

² Federal Register, Vol. 81, No. 150, DOJ, *Agency Information Collection Activities; Proposed Collection Comments Requested; New Collection: Arrest-Related Deaths Program*, Aug. 4, 2016, available at <https://www.gpo.gov/fdsys/pkg/FR-2016-08-04/pdf/2016-18484.pdf> (hereinafter Proposed Collection Comments).

³ Pub.L. 113-242.

⁴ Proposed Collection Comments, *supra* note 2 at 51490 (stating that the BJS “redesigned methodology includes a standardized mixed method, hybrid approach relying on open sources to identify eligible cases, followed by data requests from law enforcement and medical examiner/coroner offices for incident-specific information about the decedent and circumstances surrounding the event.”).

⁵ See, e.g., THE GUARDIAN, *The Counted: People killed by police in the U.S.*, available at <https://www.theguardian.com/us-news/series/counted-us-police-killings>.

attention and resources can remain focused on policing indefinitely. Thus, relying primarily on media accounts and statistics is an inadequate method of collecting data to determine the circumstances under which people die while in law enforcement custody.

Moreover, the proposal does not indicate how federal law enforcement agencies will comply with DICRA. The law is clear in its application to federal law enforcement including immigration officials, so the guidance must detail how federal agencies, including Customs and Border Protection (CBP), will comply with DICRA. Also, the proposal does not provide a clear definition for the term “custody,” particularly in instances where a fatal police shooting has occurred without an arrest.

Additionally, the proposal does not discuss penalties for noncompliance. DICRA gives the Attorney General the discretion to subject states that do not report deaths in custody to a ten percent reduction of Edward Byrne Memorial Justice Assistance Grant Program (Byrne JAG) funds. The financial penalty is critical to successful implementation of DICRA as voluntary reporting programs on police-community encounters have failed. Reportedly, only 224 of the more than 18,000 law enforcement agencies reported approximately 444 fatal police-shootings to the Federal Bureau of Investigation (FBI) in 2014,⁶ though we have reason to believe that annual numbers of people killed by police exceed 1,000.⁷

Finally, we would like to reiterate our ask that the Office of Justice Programs require state and local law enforcement agencies that benefit from Department of Justice federal grants and programs to collect and report data on incidents of police use of force and other police-community encounters, such as pedestrian and traffic stops. The federal government awards close to \$4 billion in such grants annually, and every discretionary grant should be conditioned upon providing data.⁸

Every statutory or formula grant, including the Edward Byrne Memorial Justice Assistance Grant (Byrne JAG), should require data reporting as part of its existing performance metrics. To achieve complete and uniform data collection and reporting, the federal government must solicit disaggregated data that is reflective of all police community encounters, including those encounters with people of color, women, youth, and people with disabilities. Data concerning sexual assault and misconduct by law enforcement agents should also be collected and reported.

Thank you for your attention to this matter. We also respectfully request a meeting with you to discuss this matter further. If you have any questions or comments, please feel free to contact Kanya Bennett, Legislative Counsel with the ACLU, phone: (202) 715-0808 or email: kbennett@aclu.org or Sakira Cook, Counsel with The Leadership Conference on Civil and Human Rights, phone: (202) 263-2894 or email: cook@civilrights.org or Monique Dixon,

⁶ See Federal Bureau of Investigation: Uniform Crime Reporting, 2014 Crime in the United States, available at https://ucr.fbi.gov/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/tables/expanded-homicide-data/expanded_homicide_data_table_14_justifiable_homicide_by_weapon_law_enforcement_2010-2014.xls.

⁷ See John Swaine & Oliver Laughland, *Eric Garner and Tamir Rice among those missing from FBI record of police killings*, THE GUARDIAN, Oct. 1, 2015, available at <http://www.theguardian.com/us-news/2015/oct/15/fbi-record-police-killings-tamir-rice-eric-garner>. See also Kimberly Kindy, Marc Fisher, Julie Tate & Jennifer Jenkins, *A Year of Reckoning: Police Fatally Shoot Nearly 1,000*, WASH. POST, Dec. 26, 2015, available at <http://www.washingtonpost.com/sf/investigative/2015/12/26/a-year-of-reckoning-police-fatally-shoot-nearly-1000/>.

⁸ Brennan Center for Justice, *Success-Oriented Funding: Reforming Federal Criminal Justice Grants* (2014), available at https://www.brennancenter.org/sites/default/files/publications/SuccessOrientedFunding_ReformingFederalCriminalJusticeGrants.pdf.

Deputy Policy Director and Senior Counsel with the NAACP Legal Defense and Educational Fund, Inc., phone: (202) 216-5564 or email: mdixon@naacpldf.org.

Sincerely,

9to5, National Association of Working Women
AFL-CIO
African American Ministers in Action (AAMIA)
Alpha Kappa Alpha Sorority, Incorporated® (AKA)
American-Arab Anti-Discrimination Committee
American Association of University Women (AAUW)
American Civil Liberties Union
Amnesty International USA
Andrew Goodman Foundation
Association of University Centers on Disabilities
Asian Pacific American Labor Alliance, AFL-CIO (APALA)
Bend the Arc: A Jewish Partnership for Justice
Bill of Rights Defense Committee/Defending Dissent Foundation
Black and Pink
Californians Aware
Call to Do Justice
Catholics in Alliance for the Common Good
Center for International Peace and Reconciliation
Church of Scientology National Affairs Office
Civil Liberties Defense Center
Coalition for Disability Health Equity
Coalition for Humane Immigrant Rights of Los Angeles
The Constitution Project
Council on American-Islamic Relations
CURE
DC Reentry Task Force
Demos
Dignity and Power Now
Disability Rights Education & Defense Fund
Disciples Justice Action Network
Drug Policy Alliance
Equity Matters, Inc.
Equality New Mexico
Fathers 4 Progress
Fitting the Description
Florida Legal Services
Franciscan Action Network
Friends Committee on National Legislation
Georgia Latino Alliance for Human Rights
Government Accountability Project

Hip Hop Caucus
Human Rights Defense Center
Human Rights Watch
Illinois Coalition for Immigrant and Refugee Rights
Immigrant Legal Advocacy Project
Immigrant Legal Resource Center
Jewish Council for Public Affairs (JCPA)
Jesuit Conference of Canada and the United States
Justice Strategies
Kino Border Initiative
Lambda Legal
LatinoJustice PRLDEF
Lawyers' Committee for Civil Rights Under Law
The Leadership Conference on Civil and Human Rights
Metropolitan Community Churches
NAACP
NAACP Legal Defense and Educational Fund, Inc.
National African American Drug Policy Coalition
National Association of Criminal Defense Lawyers (NACDL)
National Association of Social Workers (NASW)
National Collaborative for Health Equity
National Council of Churches
National Council of Jewish Women (NCJW)
National Council of La Raza
National Disability Rights Network (NDRN)
National Immigrant Justice Center
National Immigration Law Center
National Immigration Project of the National Lawyers Guild
National LGBTQ Task Force
National Organization for Women
National Urban League
No More Deaths/No Más Muertes
OCA – Asian Pacific American Advocates
OneAmerica
OpenTheGovernment.org
Pangea Legal Services
Prison Policy Initiative
Project South
Rainbow PUSH Coalition
Reformed Church of Highland Park
Refugee and Immigrant Center for Education and Legal Services (RAICES)
San Diego Immigrant Rights Consortium
Sharon Baptist Head Start
Society of Professional Journalists
South Asian Americans Leading Together (SAALT)

Southern Border Communities Coalition
Southern Poverty Law Center
StoptheDrugWar.org
Sunlight Foundation
Treatment Communities of America
T'ruah: The Rabbinic Call for Human Rights
Union for Reform Judaism
The United Methodist Church – General Board of Church and Society
United Sikhs
Wilco Justice Alliance
Woodhull Freedom Foundation

cc: Michael Planty, Deputy Director, Bureau of Justice Statistics
Jeri Mulrow, Acting Director, Bureau of Justice Statistics
Denise E. O'Donnell, Director, Bureau of Justice Assistance
Roy L. Austin, Jr., Deputy Assistant, Domestic Policy Council
Vanita Gupta, Principal Deputy Assistant Attorney General, Civil Rights Division
Sarah Saldaña, Director, U.S. Immigration and Customs Enforcement
R. Gil Kerlikowske, Commissioner, U.S. Customs and Border Protection