

August 29, 2016

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

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

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 undersigned national, state, and local criminal justice, civil rights, human rights, faith-based, immigrants' rights, LGBTQ, and open government organizations are writing to express concerns with the proposed implementation of the Death in Custody Reporting Act (DICRA). We are also writing to reiterate our request that the Office of Justice Programs (OJP) condition federal criminal justice grants on data collection and reporting on police-civilian encounters.

DICRA was enacted almost two years ago, so guidance on the law's implementation is welcomed. However, we have concerns with the proposed implementation published in the Federal Register.¹

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.² 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. This means that should The Guardian and the Washington Post decide to continue to invest in this research, 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-civilian encounters over the past year, but it is unlikely that national media attention and resources can remain on policing indefinitely. Thus, relying 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 instances where a fatal police shooting has occurred without an arrest.

¹ 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>.

² Pub.L. 113-242.

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. Only 224 of the more than 18,000 law enforcement agencies reported fatal police shootings to the Federal Bureau of Investigation (FBI) in 2014, though we have reason to believe that annual numbers of people killed by police exceeds 1,000.³

Finally, we would like to reiterate our ask that the Office of Justice Programs mandate data collection and reporting on police involved shootings and other excessive force by state and local law enforcement agencies that benefit from Department of Justice criminal justice grants and programs. The federal government awards close to \$4 billion in such grants annually, and any discretionary grant should be conditioned upon providing data.⁴

Any 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-civilian encounters, including those encounters with people of color, women, 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.

Sincerely,

AFL-CIO
African American Ministers in Action (AAMIA)
American-Arab Anti-Discrimination Committee
American Civil Liberties Union
Amnesty International USA
Asian Pacific American Labor Alliance, AFL-CIO (APALA)
Bend the Arc: A Jewish Partnership for Justice
Bill of Rights Defense Committee/Defending Dissent Foundation
Californians Aware
Call to Do Justice
Catholics in Alliance for the Common Good
Church of Scientology National Affairs Office
Coalition for Humane Immigrant Rights of Los Angeles
Council on American-Islamic Relations

³ 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/>.

⁴ 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.

DC Reentry Task Force
Dignity and Power Now
Disciples Justice Action Network
Equity Matters, Inc.
Equality New Mexico
Fitting the Description
Florida Legal Services
Friends Committee on National Legislation
Georgia Latino Alliance for Human Rights
Government Accountability Project
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)
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
National African American Drug Policy Coalition
National Association of Criminal Defense Lawyers
National Association of Social Workers
National Council of Jewish Women
National Disability Rights Network (NDRN)
National Employment Law Project
National Immigrant Justice Center
National Immigration Law Center
National Immigration Project of the National Lawyers Guild
National LGBTQ Task Force
No More Deaths/No Más Muertes
OCA – Asian Pacific American Advocates
OneAmerica
OpenTheGovernment.org
Pangea Legal Services
Prison Policy Initiative
Project South
Reformed Church of Highland Park
Refugee and Immigrant Center for Education and Legal Services (RAICES)
San Diego Immigrant Rights Consortium
Society of Professional Journalists
South Asian Americans Leading Together (SAALT)

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

cc: Roy Austin, 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
Denise E. O'Donnell, Director, Bureau of Justice Assistance
William J. Sabol, Director, Bureau of Justice Statistics