



NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC.

Representing America's Finest

317 South Patrick Street. ~ Alexandria, Virginia ~ 22314-3501

(703) 549-0775 ~ (800) 322-NAPO ~ Fax: (703) 684-0515

www.napo.org ~ Email: info@napo.org

EXECUTIVE OFFICERS

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MICHAEL McHALE
President

*Florida Police Benevolent
Association*

The Honorable Merrick Garland
Attorney General of the United States
United States Department of Justice
900 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

JOHN A. FLYNN
Vice President

*Police Benevolent
Association of New York City*

CRAIG LALLY

*Recording Secretary
Los Angeles Police
Protective League*

SCOTT HOVSEPIAN
Treasurer

*Massachusetts Coalition
of Police*

MARC KOVAR

*Sergeant-at-Arms
New Jersey State Policemen's
Benevolent Association*

SCOTT LEETON

*Executive Secretary
Combined Law Enforcement
Associations of Texas*

MARK YOUNG

*Vice President,
Associate Members
Detroit Police Lieutenants &
Sergeants Association*

JAMES PALMER

*Parliamentarian
Wisconsin Professional Police
Association*

WILLIAM J. JOHNSON, CAE

*Executive Director and
General Counsel*

Dear Mr. Attorney General Garland:

I am writing to you today on behalf of the National Association of Police Organizations (NAPO), representing over 241,000 sworn law enforcement officers from across the country, to advise you of our concerns with many of the provisions within the President's Executive Order on Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety. As you begin to implement the Executive Order, we hope you will take into consideration our concerns and recommendations as they relate to how the Order impacts rank-and-file officers.

NAPO shared our concerns with Ambassador Rice and the Domestic Policy Council as well as with The White House Counsel's Office over several meetings and conversations during the drafting of the Executive Order. While some of our concerns were addressed in the final Order, many remain, particularly concerning how certain provisions will be implemented by the Administration and the Department of Justice.

We remain apprehensive about the prohibition of the use of chokeholds and carotid restraints unless deadly force is authorized and its impact on the safety of officers. We are similarly concerned with the restrictions put in place on no-knock warrants. While there is an exception for circumstances where an officer's safety would be compromised, warrants are risky situations for officers whether the suspect is known to be armed and dangerous or not.

NAPO continues to be troubled with the provisions of Section 5, which establishes a National Law Enforcement Accountability Database, and the lack of specified due process rights for officers. The Executive Order directs you, as the Attorney General, to ensure that the establishment and administration of the national database is consistent with the Privacy Act of 1974 and "respects appropriate due process protections for law enforcement officers" who are included in the database.

The draft Executive Order that was leaked in January only allowed for officers to petition to remove "factually inaccurate information" about themselves from the

database *after* the data have already been posted. There was no timeframe for the petition process, so an officer's reputation could be ruined, and job opportunities missed due to factually inaccurate information being uploaded into the database. We strongly recommend that you mandate that robust due process procedures are put in place and occur *prior* to officer records being uploaded into the national database. These should include, at a minimum, the bedrock guarantees of Anglo-American jurisprudence: Notice, an opportunity to be heard, and review by a neutral fact-finder.

We are concerned that Section 12 would effectively eliminate State and local law enforcement's access to surplus federal equipment. As we stated to the former Law Enforcement Equipment Working Group pursuant to Executive Order 13688, NAPO is extremely concerned that the legitimate and well-demonstrated needs of officers are being overlooked due to the optics of law enforcement agencies obtaining this equipment from the Department of Defense.

Programs like the Department of Defense's 1033 Program have proven to be vital in allowing state and local law enforcement to acquire items needed for search and rescue operations, disaster response, and active shooter situations that they otherwise would not be able to afford. This equipment has not led to the "militarization" of police, but rather has proven to be essential in protecting officers and communities against violent criminals, including active shooters, who law enforcement are unfortunately facing with increasing frequency.

While we appreciate that the Executive Order allows for the transfer or purchase of tracked or armored vehicles that would be exclusively used for certain situations such as disaster response and recovery or active shooter scenarios, it still restricts personal protective equipment and lifesaving gear for officers. Given that state and local law enforcement are our nation's first responders to incidents from foreign and domestic terrorism to active shooter situations to flood rescues, the Administration should be ensuring law enforcement agencies are able to acquire such equipment for the protection of their communities, not limiting it.

Under Section 13, which regards the use of body-worn cameras, we are disappointed that it does not specifically allow for Federal law enforcement officers to review their own body-worn camera video prior to completing any required reports, statements, or interviews regarding the recording. The Administration seems to be walking back from the long-held best practicesⁱ established by the Department on allowing officers to review their body-worn camera footage prior to the completion of initial reports or interviews regarding an incident.

If the goal of the body-worn camera policy is to ensure the most accurate reporting, then officers should have access to the recording. Further, with its Body-Worn Camera Toolkitⁱⁱ, the Department's Bureau of Justice Assistance has found that best practices for departmental body-worn camera programs include engaging the community, prosecutors, and rank-and-file officers on body-worn camera issues and allowing for a significant degree of officer discretion when it comes to viewing the video footage.

We are confident the study and subsequent report required by the Executive Order on the advantages and disadvantages of officer review of body-worn camera footage will show there is a distinct advantage to allowing such pre-review. However, we urge you to consult with stakeholders and practitioners, including representatives of rank-and-file officers, before you identify best practices regarding officer review of body-worn camera footage.

Another significant concern with the Executive Order is that it would immediately make substantial changes for Federal law enforcement agencies, and then use the “carrot and stick” of Federal funding to get State, local and Tribal agencies to also adopt these changes, whether or not they make sense for any given locality (see Sections 19 and 20). In effect, it sets up a situation where the Department of Justice could be managing the hiring, training, deployment, and policy, including use of force and equipment, for every state and local agency. It would make law enforcement more dangerous and difficult for officers and it would exacerbate the already dire recruitment and retention issues facing state and local agencies.

Further, the Executive Order has the potential to jeopardize public safety by withholding much needed grant funds from states and localities depending on how Sections 19 and 20 are implemented. Under Section 19, within 240 days of the order, accreditation standards will be developed and published. Accreditation standards that further the policies of Sections 3, 4, and 7 – 10 of the order will take time for states, localities, and law enforcement agencies to implement. We need to ensure that law enforcement agencies are not punished and lose out on grant funding simply because they were not able to get the policies or trainings necessary for compliance in place within a short timeframe.

This concern also applies to Section 20, under which certain federal grants may be tied to compliance with this Executive Order as soon as six months of the date of the order. Again, many law enforcement agencies would be at risk of losing access to desperately needed grant funds that are directly tied to the Administration’s goals and state and local efforts with respect to addressing violent crime, reducing gun violence, and law enforcement innovation.

NAPO supports improving policing practices, accountability with due process, and training in law enforcement, but any policy must take into consideration the concerns and needs of both law enforcement and the communities they serve. A one-size fits all, top-down approach does not work when there are approximately 18,000 law enforcement agencies of all sizes serving large urban areas, suburban municipalities, rural communities, and small towns. We therefore urge you to significantly engage with law enforcement organizations and representatives as you work to implement the provisions of the Executive Order.

We appreciate your willingness to consider our views on police reform as you work to implement the President’s Executive Order. We look forward to continuing to work collaboratively with you to improve policing practices in America. Please feel free to contact me at (703) 549-0775 if you would like to discuss our concerns further.

Sincerely,



Michael McHale
President

Cc: The Honorable Susan Rice, Director, Domestic Policy Council

ⁱ <https://www.justice.gov/iso/opa/resources/472014912134715246869.pdf>

ⁱⁱ <https://bj.a.ojp.gov/program/bwc>