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Representative Aaron Michlewitz  
Chair, House Committee on Ways and Means

Representative Claire D. Cronin  
Chair, Joint Committee on the Judiciary

**SUPPORT and Strengthen S.2820  
POLICE ACCOUNTABILITY AND RACIAL JUSTICE**

Across the country, people are demanding a complete shift in policing, moving away from a system that enables violence and racial injustice, and towards alternatives that respect community autonomy and Black lives. There can be no limited or temporary fixes when it comes to policing. To address police abuses and violence, we also need to address the tools that exacerbate these crises. **We urge you to prioritize substantive legal reforms that would improve police accountability for violating people's rights and establish new standards for the use of force.**

**First, the bill must fix the Massachusetts Civil Rights Act and reform qualified immunity to enable people whose rights have been violated to secure redress in court.** To make a meaningful difference on police accountability, it needs to minimally include the provisions in S.2820, which mirror H.3277, *An Act to Secure Civil Rights Through the Courts of the Commonwealth*, reported favorably by the Judiciary Committee in February, if not eliminate qualified immunity altogether.

Laws and policies that purport to hold police accountable are meaningless without a strong enforcement mechanism. The MCRA is supposed to be that mechanism, but the current law is broken. Because of four words in the statute and the court-created doctrine of "qualified immunity," it is nearly impossible in Massachusetts to hold police accountable for civil rights violations like brutality or illegal searches.

Today, police officers can be held liable under the MCRA only if they use "threats, intimidation or coercion" to violate someone's rights – and courts have interpreted this requirement to mean that officers cannot be held liable for a direct violation of rights, even one involving terrible physical abuse. As a result, in practice, the MCRA has provided no remedy when an officer uses excessive force or violence against the very people they are sworn to protect and defend. It is shameful that Massachusetts civil rights law is far weaker than its federal counterpart and victims of brutality cannot seek meaningful redress in the

courts of the Commonwealth. The barrier to justice created by the “threats, intimidation or coercion” language must be removed.

Contemporary Massachusetts civil rights law is further undermined by qualified immunity, which shields police from accountability and denies victims of police abuse their day in court. Over time, as the U.S. Supreme Court has become more and more conservative, this concept has been expanded to become [“a nearly failsafe tool to let police brutality go unpunished and deny victims their constitutional rights.”](#) Qualified immunity denies justice for people who have been beaten, kicked, sexually assaulted, tased, or killed by police. Perversely, as the doctrine has evolved, qualified immunity has come to not only protect police from liability, but also to prevent constitutional course-correcting litigation altogether. Essentially, courts have decided that since police are entitled to broad immunity from liability, there is frequently no point in going through the exercise of even determining if the officer violated the constitution, because the result would be no redress for the victim either way. This has prevented the law from evolving to safeguard people’s rights against police violence. Qualified immunity lets police off the hook for systemic racialized violence, and leaves over-policed communities and victims to bear the full cost of its harms.

Qualified immunity should apply, if at all, only when the law is clear that the police did *not* violate the law, for instance, because there is a statute or court case saying such conduct is lawful. If there is any doubt about whether it would be lawful to hurt someone, police officers should not do it, instead of shooting first and invoking qualified immunity later. Failure to restrict qualified immunity in this historic moment will be tantamount to saying Black lives *don’t* matter.

***Second, the bill must include substantive standards for police use of force as set out in An Act relative to saving black lives and transforming public safety, filed by Rep. Miranda (HD5128).*** The House should build on and strengthen the provisions in S.2820, which begin to address these issues, but fail to adequately prohibit the most violent police tactics. State law should simply outlaw police use of choke holds, tear gas, and no-knock warrants; eliminate the role of police in situations where social interventions are safer and more effective; require police to use de-escalation techniques and tactics; limit force to the minimum amount necessary to accomplish a lawful purpose; require that any use of force be proportional; and require other officers to intervene if they witness an excessive use of force. Failure to comply with these standards should have enforceable consequences.

For evidence that these reforms are necessary in Massachusetts, one can turn to a most unlikely source: Bill Barr’s Department of Justice, which issued a report just last week regarding rampant lawless violence by the Springfield Police Department. Of the thousands of police forces around the country, the abuses of the SPD proved singularly dreadful enough to demand the exercise of DOJ’s investigatory powers. Among the report’s findings: “Narcotics Bureau officers regularly punch subjects in the head and neck area without legal

justification,” and “officers fail to take basic steps to identify themselves before resorting to force.” The DOJ report describes one particularly shocking case in which officers face criminal charges: “The indictment alleges that the sergeant kicked one of the youths in the head, spat on him, and said ‘welcome to the white man’s world.’ Further, the sergeant allegedly threatened to, among other things, crush one of the youth’s skulls and ‘fucking get away with it[.]’”<sup>1</sup> George Floyd’s murder in Minneapolis may have sparked the movement to rein in excessive force, but Massachusetts demands a strong policy response to police violence as much as anywhere.

***Third, the bill must unequivocally ban the use of face surveillance technology until meaningful regulations are enacted.***

Face surveillance poses an unprecedented threat to racial justice in policing and other core civil rights and civil liberties. In the last few weeks alone, we have learned about two cases of Black men wrongfully arrested and charged on the basis of faulty, racially biased facial recognition technology. These cases happened in Detroit, where the Chief of Police recently acknowledged the technology fails to accurately identify people 96 percent of the time, and that it is used almost exclusively to monitor Black people.

Since 2006, police in Massachusetts have been using facial recognition through the Registry of Motor Vehicles, essentially turning the state identification and driver’s license database into a perpetual lineup. This has happened under cover of secrecy, with no legislative authorization or law to mandate accuracy and racial equity requirements or impose democratic checks and balances. And despite the hundreds of searches the RMV and State Police have performed on behalf of police and even federal agencies each year, information about the use of the technology to identify people who are later arrested and prosecuted has not been communicated to defendants. This is a due process crisis—one that is more likely to impact Black and brown Massachusetts residents, who bear the burden of disproportionate policing and surveillance in communities across the state.

We cannot allow police to adopt surveillance technology that supercharges racist policing and harassment. This legislation aims to correct deeply entrenched policy failures that have haunted our country and Commonwealth for generations; it would be terribly shortsighted not to seize the opportunity to prevent the creation and entrenchment of yet another system of racialized control.

S.2820 would sensibly press pause on facial recognition technology now—before this emerging surveillance architecture is built and deployed, after which it will be much harder to dismantle.<sup>2</sup> However, such a moratorium must persist until a robustly protective

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<sup>1</sup> U.S. Department Of Justice Civil Rights Division, *Investigation of the Springfield, Massachusetts Police Department’s Narcotics Bureau*, July 8, 2020, available at <https://www.justice.gov/opa/pr/justice-department-announces-findings-investigation-narcotics-bureau-springfield>

<sup>2</sup> These provisions derive from *An Act Relative to Unregulated Face Recognition and Emerging Biometric Surveillance Technologies* (filed by Rep. Dave Rogers in the House as H.1538).

regulatory structure is put in place; they must not be permitted to arbitrarily expire and return the Commonwealth to the dangerous status quo.

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The three proposals discussed above are critical components that must be included in initial legislation to strengthen police accountability, but they must not be mistaken for comprehensive reform. As legislative leaders themselves have acknowledged, this will be a long road. The elements of this bill must be understood as necessary harm reduction steps as we work toward more fundamental shifts and reduction of the role and power of police, and as we strive to dismantle systemic racism more broadly.

Massachusetts and the nation must look squarely at the intersection of policing and racial injustice. Policing in America is inherently tied to the nation's first and most devastating sin: chattel slavery. Modern police forces in this country can be traced back to slave patrols used in Charleston, South Carolina. From their inception, police have been tasked with protecting power and privilege by exerting social control over Black people. That racist history is the broken foundation that our modern policing institutions are built upon, and today police are too often empowered to act as an occupying force in low-income communities and communities of color across the country. Crime has trended downward for decades and violent crime and property crime have fallen significantly since the early 1990s, yet the cost of policing has increased exponentially and Black communities in the U.S. live under a persistent and well-founded fear of being killed by the police.

If this bill includes all the above proposals, it will be an important first step on the road to more fundamental changes. Yet there is so much more to be done. We must decriminalize substance use and behavioral health issues and poverty, eliminate public order offenses, engage in top to bottom sentencing reform, embrace restorative justice, and end the criminal legal system's dependence on carceral control. We must shift power, funding, resources, and responsibility away from punitive policing and social control and into community-based and community-led supportive services that uplift communities historically targeted and disproportionately harmed by police. Above all, moving forward, system and policy reform must be driven by community input, especially from Black and Latinx and low-income communities most directly impacted by the grip of the criminal legal system.

This is a watershed moment for racial justice, and a moment for solidarity with people protesting police brutality in the streets. We urge you to seize this opportunity to pass meaningful legislation that begins to address past violence and prevent future harms — and not stop there.