



Statement of Professor Kimberlé Williams Crenshaw

Co-Founder, Executive Director of the African American Policy Forum

Chairwoman Maloney, Ranking Member Jordan, and members of the Committee: I am Kimberlé Williams Crenshaw, executive director of the African American Policy Forum (AAPF), Professor of Law at UCLA, and faculty director of the Center for Intersectionality & Social Policy Studies (CISPS) at Columbia Law School.

This Wednesday night, my organizations—the African American Policy Forum and the Center for Intersectionality and Social Policy Studies—hosted a webinar featuring the stories of African Americans killed by police.¹ For two hours we bore witness to the stories of surviving family members about the heavy toll of violence and death wrought by police violence against Black people. Their stories revealed how the structural and institutional dimensions of police violence broaden the scope of the problem beyond the “few bad apples” frame that so often settles into these considerations. They told us about how the war on drugs, racial profiling, paramilitary policing, permissive lethal force, implicit and explicit biases, police-sourced solutions to mental health and other social problems all lead disproportionately to Black death. They talked about how the impunity with which too many police officers act remains insulated by qualified immunity and special protection negotiations by police union that allow them to escape liability. Together, we talked about how the last words uttered by dying Black people must guide our resolve to transform American policing—words like, “I can’t breathe,” “You promised not to kill me,” or simply and heartbreakingly “Momma!”

By now, I’m sure that from the stories you’ve heard, from the news you’ve read, from the pleas for justice you’ve seen, you match these stories to names you know: Eric Garner, Michael Brown, Philando Castile, and George Floyd.

But the African Americans that we were talking about this week were Michelle Cusseaux, India Kager, Kayla Moore, Shelly Frey, Korryn Gaines, and Sandra Bland.

Despite their relative erasure from this discourse, the shocking fact remains that Black women and girls as young as 7 and as old as 93 have been killed by police—they’ve been shot,

¹ The African American Policy Forum hosts a weekly webinar series *Under the Blacklight: the Intersectional Vulnerabilities COVID Lays Bare*. For more information about the series, see <https://aapf.org/aapfcovid>. For the full episode referenced, *Say Her Name: Telling Stories of Police Violence and Public Silence*, see <https://www.youtube.com/watch?v=S2MfJOJaeGA> (July 17, 2020).

choked out, body-slammed and tasered to death while driving while black, having mental disabilities while Black, shopping while Black, being homeless while Black, sleeping while Black, defending themselves while Black, and asserting their rights while Black. Their lives have been snuffed out as acceptable collateral damage, like India Kager, a Navy Veteran who was killed when a Virginia Beach Swat Team fired 50 rounds into a car, knowing that she and her 4-month old son had done absolutely nothing wrong.

Black women have been killed when officers escalated mental health requests into homicides, as they did to Kayla Moore and Michelle Cussueax, who were both killed inside their own home. They've been killed while their families watched in horror, like Tanisha Anderson who was body-slammed to the ground, and while life was being squeezed out of her, officers held her mother off at gunpoint. And they've been killed, as in the case of Natasha McKenna, while strapped, nude, to a restraining chair by a half dozen cops in hazmat gear, and tasered four times while hooded and handcuffed. It was Natasha who uttered the words that should haunt all of us—"You promised not to kill me."

These family testimonies are amplified by the many disturbing images readily viewable on the internet—images of Black women and girls being abused by law enforcement, teenagers being thrown across a classroom or pinned to the ground; a mentally disabled woman beaten in the face with closed fists; another woman hogtied and dragged out of a police car; another, an elderly and disabled grandmother, paraded nude in a police precinct. Police violence against Black women is very real, visceral, and dehumanizing. And it is also invisible.

We know that where a problem isn't fully seen, it cannot be fully solved. That's why the structural and intersectional dimensions of police violence cannot be overlooked.

In 2014, we at the AAPF began "SayHerName" to raise awareness of the reality that Black women are far from exempt as targets of this tyranny. In fact, Black women are the most likely group of slain civilians to be unarmed at the time they are killed, which may mean that among women killed by the police, their Blackness may be a greater risk factor than being armed.²

Their stories both underscore and expand the current conversation about police reform.³ The deaths of so many Black women who are killed by the very police who are called to help when they are in mental health crisis amplifies the need to rethink the role of police as first responders and to invest in community-based approaches to public safety. The deaths of Breonna

² The Fatal Interactions with Police Study found that 57.2% of Black women were unarmed when they were killed by police. Black women were the only race-gender group to have a majority of its members unarmed when killed. See O. Johnson et. al., *Race, Gender, and the Contexts of Unarmed Fatal Interactions with Police* at 24 (Feb. 6, 2018), <https://sites.wustl.edu/fips/>

³ For more information about the vulnerability of Black women and girls to police violence, see K. Crenshaw and A. Ritchie, *Say Her Name: Resisting Police Brutality Against Black Women* (July 2015), http://static1.squarespace.com/static/53f20d90e4b0b80451158d8c/t/560c068ee4b0af26f72741df/1443628686535/AAPF_SMN_Brief_Full_singles-min.pdf

Taylor and Atatiana Jefferson underscore that unless no-knock warrants are eliminated and de-escalation mandates are required, state violence will continue to reach Black women even in the sanctity of their own homes. The death of Korryn Gaines, shot point blank in her own home after an escalation over traffic tickets points to the need to minimize confrontations over fines and fees. And the death of Sandra Bland points both to the intersections of gender and race bias, but also the institutional backdrop that facilitates and insulates these practices, putting Black women at risk.

To countless Black women who observed the fateful encounter between Officer Encinia and Sandra Bland, Encinia's disrespect, prodding, and threats to “light [her] up” with a taser all reflect the possibility of bias uniquely prompted by both her race and gender. But beyond the possible intersectional bias of the officer—an important factor that has yet to be sufficiently captured in both implicit and explicit bias research and training—are the background legal rules that facilitate such encounters, exacerbate their consequences, and insulate officers and departments when they occur. Current interpretations of the 4th amendment allowed Officer Encinia to effectively prompt an infraction by his own behavior, and the law more broadly provides minimal disincentives against escalating that interaction into a physical encounter.

The largely unregulated discretion of police officers to initiate encounters that lead to Sandra Bland’s death is also what enhances the risks of other kinds of abuse, including sexual assault. This underreported and under-researched dimension of police abuse was momentarily made visible when an Oklahoma City jury convicted a former officer of multiple counts of sexual abuse against Black women while on duty. Evidence points both to the fact that the 13 Black women who testified against Daniel Holtzclaw are not the only ones who experience this intersection of interpersonal and state violence—a 2012 study showed that showed that more than 41% of police sexual violence cases were committed by officers who had previously assaulted an average of 12 victims in a 3-year period.⁴ We would know much more about how gender, including gender policing, impacts Black people and the society as a whole if Black women were central to this conversation.

The abuse of Black women reinforces the recognition that under this legal regime, overexposure to police heightens the risks of trauma and death by police. Our goal must thus be to reduce the exposure of all Black people to police.

The AAPF and CISPS support the Justice in Policing Act as an important first step in overhauling policing in the United States. We further promote the need for all data, training, and other resource-related activities to reflect a fully intersectional lens. This requires the disaggregation of race, gender and other factors in collecting data, in assessing institutional and individual bias, in developing training programs and officer-civilian protocols, and in creating alternatives to law enforcement activities. Lastly, we share policy demands that are guided by the

⁴ See C. Rabe-Hemp et al., *An Exploration of Recidivism and the Officer Shuffle in Police Sexual Violence* (Nov. 19, 2012). Access here: <https://journals.sagepub.com/doi/10.1177/1098611112464964>

lived realities of the Black women who have been assaulted and killed at the hands of law enforcement, as well as their families. Those demands include:

- **Investing in community-based practices of public safety that limit the public's interactions with police as much as possible.** Police officers should never be involved in noncriminal calls or requests for mental health assistance. This proposal could have saved the life of Kayla Moore, who was shot and killed by Berkeley police who were responding to a mental health call. It could have saved the life of Michelle Cusseaux, who was shot and killed by Phoenix police who were responding to a mental health call. These women could still be with us today.
- **Pursuing a constellation of reforms that specifically address the home as a site of police violence against Black women.** Breonna Taylor and Atatiana Jefferson are two of the names we know when it comes to women who were senselessly murdered in their homes. Kathryn Johnston, Shereese Francis, Aiyana Stanley-Jones, and Tarika Wilson are some of the names that many people in this room are probably less familiar with. Yet each of those women had their lives cut short by police who killed them while they were in their own homes. A complete prohibition against no-knock warrants is a first step that Congress could take. Even this, however, is only a first step. To rise to the moment, proposals must meaningfully reduce the instances in which police officers are called to the home in the first place. Performing welfare checks, and responding to domestic disturbances and mental health calls are roles police officers are ill-suited to perform and all too often have lethal consequences for Black women. We can no longer allow police officers and criminalization to subsume all other forms of public safety and social welfare. Existing resources must be redirected and reinvested in ways that meet people's needs, rather than violently punishing them for having those needs.
- **Ending qualified immunity.** Since the Supreme Court first articulated the doctrine of qualified immunity in 1967, it has served as an often impenetrable shield, allowing officers who commit even egregious Constitutional violations to escape accountability. The doctrinal evolution of qualified immunity has only further restricted the recourse available to those who are assaulted, brutalized, and even killed by police. Take for instance, the example of Rhanda Doremus—one of the mothers of the #SayHerName network—and her daughter Korryn Gaines. In 2015, Baltimore police shot Korryn Gaines in the back, killing her. A jury awarded Korryn's family \$38 million, only for that decision to be rescinded by a judge who found that the officer who killed Korryn and shot her 5-year-old son, was entitled to qualified immunity.
- **Addressing the sexual violence perpetrated by law enforcement officers.** Centering the experiences of Black women who are victims of police violence requires that Congress address the sexual violence perpetrated by law enforcement officers. A 2010 Cato Institute review found that sexual abuse is the second most common complaint

against the police. Federal legislation should recognize that people cannot *ever* consent to sexual relations while detained by police and that sexual assault while in custody or detained is a violation of an individual's federal civil rights. States and cities must enact and enforce “zero-tolerance” policies toward sexual harassment and assault by police officers. Any off-duty sexual assault or domestic abuse must be treated as an automatically fireable offense.

- **Restricting the ability of departments to hire and retain officers who engage in misconduct.** The creation of a federal misconduct registry is necessary, but will be of little use if departments continue the practice of hiring or rehiring officers who engage in excessive force and other forms of misconduct. Many of the policies by which departments rehire or refuse to fire individuals with disgraceful disciplinary records are the product of agreements negotiated with police unions that all too often represent the worst of the worst in terms of approaching policing with a violent us-versus-them mentality. To ensure that the federal misconduct registry does not become simply a laundry list of officers who are able to brutalize Black people with impunity, Congress must exert its considerable leverage to pressure cities and states to reform the laws and policies that govern the hiring and firing of officers and the penalties for misconduct.

To begin meeting these demands for justice, this Congress must begin the long and arduous process of challenging what's only been reinforced for centuries. And it must do so with an awareness of all of the systems of oppression it operates within.

In a word, this congress must pursue justice intersectionally. Thank you for your time.