



NATIONAL ASSOCIATION OF POLICE ORGANIZATIONS, INC.

Representing America's Finest

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EXECUTIVE OFFICERS January 10, 2022

MICHAEL McHALE

President
Florida Police Benevolent
Association

Hon. Susan E. Rice
Director
Domestic Policy Council

JOHN A. FLYNN

Vice President
Police Benevolent
Association of New York City

Room 469
Eisenhower Executive Office Building
Washington, D.C. 20502

CRAIG LALLY

Recording Secretary
Los Angeles Police
Protective League

Dear Ambassador Rice,

SCOTT HOVSEPIAN

Treasurer
Massachusetts Coalition
of Police

I am writing to you today on behalf of the National Association of Police Organizations (NAPPO), representing over 241,000 sworn law enforcement officers from across the country, to advise you of our serious concerns with many of the provisions of the draft Executive Order, as reported in [*The Federalist*](#).

MARC KOVAR

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

We feel that the Administration has not been forthcoming about details of the contemplated Executive Order, outside of the one listening session NAPPO participated in, nor given significant response to our recommendations regarding potential police reform policies that could be included in an Executive Order. We are greatly disappointed, as one of the largest representatives of sworn rank-and-file law enforcement officers in the country, to have been largely locked out of the discussion around this overhaul of the law enforcement profession. The result is a draft Order with which we have significant concerns.

SCOTT LEETON

Executive Secretary
Combined Law Enforcement
Associations of Texas

MARK YOUNG

Vice President,
Associate Members
Detroit Police Lieutenants &
Sergeants Association

It is troubling, given the nearly unified opposition by the law enforcement community, that under Section 1, "Policy Statement", the draft Order calls for Congress to make significant changes to qualified immunity and Section 242 of Title 18 United States Code. We strongly believe that the elimination of this well-settled constitutional protection and the haphazard modification of Section 242 that have been proposed by Congress will decimate law enforcement. Combined, these two provisions take away all good faith legal protections for officers while making it easier to prosecute them criminally for good faith mistakes on the job, not just criminal acts. No substantial reason has been proffered for the sudden and wholesale change to decades of Constitutional jurisprudence.

JAMES PALMER

Parliamentarian
Wisconsin Professional Police
Association

WILLIAM J. JOHNSON, CAE

Executive Director and
General Counsel

The threat of the elimination of qualified immunity has already caused decent, experienced officers and newly hired officers alike to seek other jobs. Police departments will be decimated, and it will be more difficult than it already is to recruit new officers.

Also, the very real danger of an officer being sent to prison *for a good-faith mistake* will cause officers to hesitate to protect themselves and others when they clearly need to do so. This will lead to the deaths and injuries of American police officers.

NAPO also has concerns with the provisions of Section 5, which establishes a National Law Enforcement Accountability Database. While it purports to provide adequate due process rights for officers, in reality, it only allows for officers to petition to remove “factually inaccurate information” about themselves from the database *after* the data has already been posted. There is 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 robust due process procedures are put in place and occur *prior* to officer records being uploaded into the national database.

Due process protections are also missing under Section 13 regarding body-worn cameras. The draft order specifically prohibits Federal law enforcement officers from reviewing or receiving an accounting of any of their own body-worn camera video until all required reports, statements or interviews regarding the recording are completed. 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 Toolkit](#), the U.S. Department of Justice’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.

Sections 12 and 21 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 communities against violent criminals, including active shooter situations, which are unfortunately increasing in frequency.

Another significant concern with the draft 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 will 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 draft Order has the potential to jeopardize public safety by withholding much needed grant funds from states and localities. There is no reasonable way for many of the requirements laid out for certification under Section 19 and the grant eligibility requirements of Section 20 to be completed by the Fiscal 2023 grant cycle, as called for by the draft Order. This effectively would “defund” many law enforcement agencies and negatively impact public safety at a time when violent crime rates are skyrocketing in cities and communities across the country. Agencies would lose 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 in the next fiscal year.

There was so little support in the House of Representatives for nearly identical grant eligibility requirements that lawmakers were unable to bring the Fiscal 2022 Commerce, Justice, Science and Related Agencies (CJS) appropriations bill, H.R. 4505, to the floor for a vote because it would have failed. Senate appropriators seemingly agreed that there would be no support for such provisions and did not include anything similar in the draft Fiscal 2022 CJS appropriations bill it released. We strongly discourage the Administration from tying the provisions of this draft Order to Federal discretionary grants.

I have highlighted a few of the areas where we have strong opposition, but there are additional areas of the draft Order not covered in this letter with which we have concerns. It is very clear to NAPO that this draft Order was written without the full consultation of the men and women who do this job every day. We have no choice but to oppose this draft Order.

We welcome the opportunity for a robust discussion of our concerns, specific provisions the Administration is considering including in the final Executive Order, and the goals of the Administration on the issue of police reform.

Thank you for your attention to our concerns. Please feel free to contact me at our Alexandria, Virginia office at (703) 549-0775 if you would like to discuss our concerns further.

Sincerely,

A handwritten signature in black ink that reads "Michael McHale". The signature is written in a cursive, flowing style.

Michael McHale
President