

Date: August 13, 2020
To: Suat Cubukcu, JLC 309
From: Katherine Boyko
Re: Increasing Police Accountability

Problem:

Within the United States, police brutality victims and their families rarely have avenues to hold police accountable. In 2020 alone, police had already killed 598 people. Between 2013 and 2019, about 90% of killings by police have not resulted in any officers being charged with a crime. At the same time, excuses that police violence is a byproduct of violent crime on the streets are misguided. For example, in Buffalo, New York, the violent crime rate is approximately 12 per 1000 people. Between 2013 and 2016, police forces killed zero individuals there. On the other hand, in Orlando, Florida, a lower violent crime rate of 9 per 1000 people resulted in 13 people's deaths, killed by police officers between 2013 and 2016 (Sinyangwe, 2020).

One of the primary reasons behind the lack of accountability is the doctrine of qualified immunity. This legal doctrine protects government officials by allowing suits to be brought to court only when the officials have violated a clearly established statutory or constitutional right that "a hypothetical reasonable official would have known...violated the plaintiff's rights" (Cornell Law School). In *Pearson v. Callahan*, Supreme Court established that qualified immunity is vital to shield officials from "harassment, distraction, and liability when they perform their duties reasonably" (Cornell Law School). However, this doctrine is increasingly used to shield law enforcement officers from innumerable constitutional violations by providing them with virtual impunity.

In the news today, we hear an increased number of reports about police shootings. Nevertheless, due to their qualified immunity, police officers avoid punishment by the criminal justice system. Prosecutors deny charges, grand juries decline to indict, and juries acquit (Ali & Clark, 2019). As a result, police brutality and harassment victims get no relief, particularly the people of color and people of lower socioeconomic status. Additionally, if the victim's case is dismissed or lost, their attorneys fail to recover fees, subsequently losing incentive to represent police brutality cases. At the same time, law enforcement is further incentivized to tarnish the law by continued abuses. Because of this, the federal government should abolish the doctrine of qualified immunity on the national level.

Policy:

The policy to end qualified immunity should consist of two parts. First and foremost, the policy should abolish the protections of qualified immunity for government officials, particularly law enforcement officers. Victims of police brutality and harassment should be able to seek relief by suing perpetrators and gaining their rightful compensation when the court finds in their favor.

The lawsuits concerning law enforcement agents should no longer be easily dismissed, nor should the officers guilty of mistreatment and violence remain within the law enforcement agencies. This part of the policy will ensure just accountability for actions and provide Americans with a greater sense that law enforcement agencies are there to provide safety for communities, rather than act as aggressors. About 63% of Americans already support abolishing qualified immunity (Ekins, 2020).

Second, the policy should establish a practice of two-way fee-shifting. Currently, our legal system includes "one-way fee-shifting" (Fitzpatrick, 2020). It forces the government to pay for an individual's legal fees if they win; however, it does not force individuals to pay for the government's legal fees in lawsuits if the individual loses. The one-way fee-shifting system therefore provides excessive incentives for lawyers to bring up cases to the criminal justice system. Currently, qualified immunity protects against such lawsuits arising from misguided impulses (Fitzpatrick, 2020). However, if qualified immunity is eliminated without any protections, the system would surely become packed with frivolous lawsuits. Therefore, the policy should establish a two-way fee-shifting, making both parties responsible for paying for another side's legal fees in case they lose. This will make both parties careful when considering when and how to sue. Furthermore, it would incentivize the government to change more policies after consecutive payments for others' legal fees when it continuously commences losing cases.

Alternatively, the government could increase funding for police departments to sponsor better training programs. Such efforts are already taking place which include virtual reality de-escalation and implicit bias training. However, especially the racial bias training, although useful, can lead to more harm. It may potentially make officers second-guess themselves resulting in deadly consequences. Moreover, Matthew Johnson, former president of the Los Angeles Police Commission argues that "If we think that we do... a week of de-escalation training or a week of anti-bias training and we're gonna solve all the problems... we're totally fooling ourselves" (CBS News, 2020). This once again reinforces the fact that policies holding officers accountable are required to substantiate other efforts at police reform. Despite this, utterly dismissing better training for law enforcement agencies is nonetheless counterproductive. Although costly, training programs substantiate the gaps within the proposed two-part policy previously mentioned and focus on reforming police force from inside.

To initiate the policy change aimed at eliminating qualified immunity and to establish a two-way fee-shifting system, there needs to be strong bipartisan support. Already, the right-leaning commentator David French and the left-leaning UCLA law professor Joanna Schwartz have both made arguments favoring the abolishment of qualified immunity (Stoughton, Noble, & Alpert, 2020). Interest groups such as the American Civil Liberties Union (ACLU), the NAACP Legal Defence Fund, the Cato Institute, and the Alliance Defending Freedom have also voiced their support (Stoughton, Noble, & Alpert, 2020). While Democrats want to end special protections for government officials, Republicans have their reservations. Mainly, Republicans are concerned that eliminating protections such as those of qualified immunity would result in a substantial number of frivolous lawsuits leading to unnecessary government spending. The proposed two-part policy therefore successfully appeases both parties and the recent Black Lives Matter protests provide an ideal platform to initiate such policy change. Therefore, to initiate such policy change on the federal level, the public should continue to rally Congress and

academics should write reports to Congressmen in support of this legislative change. They should argue that the aforementioned policy would increase accountability without the disruption of the criminal justice system.

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