

STATE TROOPERS FRATERNAL
ASSOCIATION OF NEW JERSEY,

Appellants-Petitioners,

v.

STATE OF NEW JERSEY, GURBIR
S. GREWAL, in his capacity as
ATTORNEY GENERAL, COLONEL
PATRICK J. CALLAHAN, in his
Capacity as SUPERINTENDENT of
the DIVISION OF STATE POLICE
and THE DIVISION OF STATE
POLICE,

Respondents.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO: A-3950-19

CIVIL ACTION

On Appeal from:

On Appeal from the June 15, 2020
and June 19, 2020 Final
Administrative Actions
of the Attorney General

**BRIEF OF AMICI CURIAE NATIONAL COALITION OF LATINO OFFICERS
AND LAW ENFORCEMENT ACTION PARTNERSHIP**

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¹ <https://bit.ly/3izEGz4>

Rich Morin, et. al., Behind The Badge: Inside America’s Police Departments, Pew Research Center (January 11, 2017)22

Joseph A. Schafer, The Role of Trust and Transparency In the Pursuit of Procedural and Organizational Justice, 8 Journal of Policing, Intelligence & Counter Terrorism 135 (2013)14

Matt Stout & O’Ryan Johnson, Black Boston Police Officers Facing Higher Disciplinary Rates than White Counterparts, Boston Herald, November 18, 2018 23

U.S. Dep’t of Justice, Final Report of the President's Task Force on 21st Century Policing 9 (May 2015)10

U.S. Dep’t of Justice, Police Integrity - Public Service with Honor 7 (January 1997)10

PRELIMINARY STATEMENT

The National Coalition of Latino Officers and the Law Enforcement Action Partnership (hereinafter "Amici") are non-profit organizations comprised primarily of members of the law enforcement community. Amici file this friend-of-the-court brief in opposition to the motions for a stay by the police unions and in support of the Attorney General's (AG) recent directives to disclose the names of officers who have received major discipline.

This Court must understand that not all law enforcement officers agree with the police union's position in this appeal; many want transparency. Amici know from decades of collective law enforcement experience that community trust is a core requirement to effective policing. Amici also know that transparency is an important part of building that trust, while secrecy can seriously undermine it. When internal affairs (IA) and disciplinary information in particular is kept a secret, the community has no way of knowing whether investigations are thorough and fair, and whether officers are properly held accountable for their actions. When communities are deprived of such information, it leads them to believe IA complaints are not taken seriously and that misconduct is swept under the rug. This causes the community to distrust the police.

When police departments have not earned the community's respect, it makes the jobs of all police officers much more

difficult and dangerous. Members of the community are less likely to report crimes that they witnessed and they may suffer in silence when they are victimized. This makes it more difficult for police to do their jobs and makes the community less safe. It also leads to fear of and animosity toward the police. Obviously, there are other significant problems that lead people to distrust the police, including systemic racism within the criminal justice system that disproportionately arrests and incarcerates people of color and incidents of police brutality such as the recent tragic murder of George Floyd. But secrecy only perpetuates those problems and further erodes respect for the police.

The police unions attack the AG's recent decision to disclose the names of officers who receive major discipline, arguing that some officers receive major discipline for what they believe are minor infractions, such as uniform violations or tardiness.²

² The unions also list the following behavior as "irrelevant" to the public's interest: domestic violence, DWIs, traffic violations, failure to pay child support, failure to make timely reports, sleeping on the job, and similar behavior. But, a police officer "is a special kind of public employee." In re Carter, 191 N.J. 474, 486 (2007) (quoting Twp. of Moorestown v. Armstrong, 89 N.J. Super. 560, 566 (App. Div. 1965), certif. denied, 47 N.J. 80 (1966)). A police officer "must present an image of personal integrity and dependability in order to have the respect of the public." Ibid. This high standard of conduct "is one of the obligations [a police officer] undertakes upon voluntary entry into the public service." In re Phillips, 117 N.J. 567, 577 (1990). If police officers violate the very criminal laws and motor vehicle laws that they are enforcing, that significantly undermines the public's trust. Further, if officers are suspended because they do not follow administrative rules, that suggests

Although the unions are convinced that this justifies secrecy, transparency is the much better option. In addition to building community trust, transparency will let the public see how the police disciplinary system works and may lead the public to push for change so that non-serious infractions do not result in major discipline. The police are the public and the public are the police, and thus the police disciplinary system should involve the public and allow the public to see whether it works the way they would like it to work.

Transparency will also expose discrepancies in discipline and allow the public - and officers - to see whether discipline is imposed consistently. This will particularly benefit Black and Latino officers and others who work in a New Jersey police force that is overwhelmingly white and male. Minority and women officers often complain of being singled out and punished more severely than their white male counterparts. The AG's directives will expose those disparities and better protect minority officers from discrimination and retaliation.

that those officers may have problems with authority or following rules in general. Disclosure of the discipline helps earn the public's trust because it shows that the agency holds its officers to high standards. Maintaining the public's trust is imperative to effective policing. Amici also direct the Court to Point II, which addresses how disclosure of this information will expose racial disparities in how discipline is imposed.

Amici therefore support AG Law Enforcement Directives 2020-5 and 2020-6. New Jersey has had a policy of total secrecy in police disciplinary matters for decades, which has no doubt played a role in the racial profiling, civil rights abuses, and dysfunctional IA units that have led more than one New Jersey law enforcement agency to be placed under federal monitoring. If law enforcement agencies want to earn the public's trust and become more effective in serving and protecting the public, then the "police code of silence" must be replaced with the "police code of transparency." Although Amici hope for much more transparency in the future and wish to play a role in making such changes, these directives reflect an important step on the path to full transparency and will expose serious problems within New Jersey policing.

Statement of Interest of Amici Curiae

The Amici are non-profit organizations comprised largely of members from the law enforcement community who believe that law enforcement agencies must return to the fundamental principles of modern policing, which means both increasing police-community trust and preventing crime instead of reacting to crime. A key component of police-community trust is transparency, especially in the police disciplinary process. As members of the law enforcement community and criminal justice system, Amici have a special interest and expertise in this matter of significant public importance and they will assist the Court in its resolution of

this case. Accordingly, Amici ask the Court to permit their participation pursuant to Rule 1:13-9.

A. About National Coalition of Latino Officers

The National Coalition of Latino Officers (NCLC) is a non-profit organization with its headquarters in New Jersey. It was founded in 2012 to address the concerns of the many Latino law enforcement organizations and officers throughout the nation. Each of the founding members of NCLC has an extensive background in law enforcement and have all been executive board members of other Latino organizations. Many members are currently law enforcement officers working within New Jersey law enforcement agencies. NCLC believes that together, the Latino law enforcement community must have a strong organization with a decisive and united voice.

NCLC supports more than twenty (20) Latino law enforcement organizations across the nation, including local chapters in New Jersey. NCLC acts as ambassadors between the community and government. It works with the community and all levels of government to bring fairness and equality to the hiring and promotional practices of law enforcement agencies; to provide adequate and valuable training and education to its members in furtherance of their careers; to be an advocate for its member organizations at the state and national level; and to assist member organizations in community outreach programs.

NCLO believes that transparency is necessary to protect the rights of Latino law enforcement officers, as well as Black officers, Asian officers, women officers, and others who are a minority among a New Jersey police force that is overwhelmingly white and male. Too often, NCLO hears stories from Latino officers and other minority officers who have been disciplined more severely than their white male counterparts or who have become the target of a retaliatory internal affairs unit. These officers tell NCLO that their own complaints against fellow officers who discriminate against them are often swept under a rug and never properly investigated. Some of NCLO's own executive board members have experienced this retaliation and discrimination first hand, but all of it is kept hidden from the public. NCLO believes that transparency will expose these problems. Although NCLO wishes the Attorney General's directives included a statewide Latino perspective in its development and provided broad access to IA records and disciplinary files, the directives are nonetheless an initial step in the right direction and must be upheld.

B. About Law Enforcement Action Partnership

The Law Enforcement Action Partnership (LEAP) is a 501(c)(3) nonprofit of police, prosecutors, judges, corrections officials, and other law enforcement officials advocating for criminal justice and drug policy reforms that will make our communities safer and more just. Founded by five police officers in 2002 with

a sole focus on drug policy, today LEAP's speakers bureau consists of more than 200 criminal justice professionals advising on police-community relations, transparency and accountability, incarceration, harm reduction, drug policy, and global issues from a place of unassailable credibility and insight. Through speaking engagements, media appearances, testimony, and support of allied efforts, LEAP reaches audiences across a wide spectrum of affiliations and beliefs, calling for more practical and ethical policies from a public safety perspective.

LEAP believes that the key to improving police effectiveness and public safety is to return to the fundamental principles of modern policing, which means both increasing police-community trust and preventing crime instead of reacting to crime. Transparency is a critical component of increasing police-community trust and therefore LEAP has advocated for public access to police internal affairs and disciplinary records. This level of transparency is not only necessary for securing public respect – trust – but it is the public's right because the police exist only because of the public and they do the public's work. Therefore, the public has a right to be informed about all police matters, including the right to access reports and information about police behavior within the community, both good and bad.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Amici accept the Statement of Facts and Procedural History found in the Attorney General's brief in this matter.

LEGAL ARGUMENT

I. TRANSPARENCY GREATLY BENEFITS POLICE OFFICERS AND LAW ENFORCEMENT AGENCIES SACRIFICE POLICE EFFECTIVENESS AND OFFICER SAFETY WHEN THEY UNDERMINE COMMUNITY TRUST BY MAINTAINING SECRECY IN THEIR DISCIPLINARY PROCESSES

A positive relationship between police and the community is the cornerstone to effective policing and keeping the public safe. This concept is not new. In 1829, Sir Robert Peel, known as the "Father of Modern Policing," set forth a list of nine law enforcement principles that recognized, among other things, that:

- The police need the public's respect and trust;³
- The police are the public and the public are police;⁴

These Peelian Principles, and others, represent an early

³ Principle Two states: "The ability of the police to perform their duties is dependent upon *public approval* of police existence, actions, behavior and the ability of the police to secure and maintain public respect." Rachel Dissel, The Roots of Policing: Sir Robert Peel's 9 Principles, The Plain Dealer, June 8, 2016 (emphasis added), available at <https://bit.ly/2BCeGSH>. Principle Three states: "The police must secure the willing cooperation of the public in voluntary observance of the law to be able to secure and maintain public respect." Ibid.

⁴ Principle Seven states: "The police at all times should maintain a relationship with the public that gives reality to the historic tradition that the police are the public and the public are the police; the police are the only members of the public who are paid to give full-time attention to duties which are incumbent on every citizen in the intent of the community welfare." Ibid.

version of community policing that guides almost all police departments today. See Debo P. Adegbile, Policing Through an American Prism, 126 Yale L.J. 2222, 2228 (2017); Dissel, The Roots of Policing. In fact, these principles are on full display in Law Enforcement Directive 2020-5:

More is required to promote trust, transparency and accountability, and I have concluded that it is in the public's interest to reveal the identities of New Jersey law enforcement officers sanctioned for serious disciplinary violations. Our state's law enforcement agencies cannot carry out their important public safety responsibilities without the confidence of the people they serve. The public's trust depends on maintaining confidence that police officers serve their communities with dignity and respect. In the uncommon instance when officers fall well short of those expectations, the public has a right to know that an infraction occurred, and that the underlying issue was corrected before that officer potentially returned to duty.

[Law Enforcement Directive 2020-5 at 2.]

As argued below, earning the community's trust must be a top priority for all law enforcement agencies and law enforcement officers as losing that trust has serious consequences for both the community and the police. To adhere to the Peelian principles and earn the public's trust, police departments must be fully transparent. This includes giving the public access to information about police discipline. Such transparency will greatly benefit

police departments⁵ in numerous ways, including by making police departments more effective and by promoting officer safety. The petitioner police unions should not be hostile toward transparency; they should fully embrace it and call for even more, as it will only improve their police departments and make their jobs easier.

A. Community Trust Benefits Police Officers By Making It Easier for Them to Do Their Jobs and By Promoting Safety

Although not stated explicitly, President Obama's Task Force on Twenty-First Century Policing embraced the Peelian Principles. Adegbile, 126 Yale L.J. at 2244 (citing U.S. Dep't of Justice, Final Report of the President's Task Force on 21st Century Policing 9 (May 2015) (hereinafter "Task Force Report"). In fact, "building trust and legitimacy" was the first pillar of policing recommended by the Task Force. Task Force Report at 29. This is because for decades the U.S. Department of Justice has recognized that "[t]he police, one of the foundations of the criminal justice system, must ensure the public trust if the system is to perform its mission to the fullest." U.S. Dep't of Justice, Police Integrity - Public Service with Honor 7 (January 1997).

In Amici's years of collective law enforcement experience, strong police-community ties are essential for law enforcement

⁵ Amici also believe that transparency significantly benefits the public as well, as argued in the brief submitted by the ACLU of New Jersey.

agencies. Mutual trust between the community and the police benefits both the police and the community in many ways:

When there is trust between law enforcement and the community, the community benefits because law enforcement officers place primacy on the community's wellbeing and understand the weight of their responsibility. Police, in turn, benefit from working in a community that appreciates their role in promoting safety and actively supports that common goal.

[Adegbile, 126 Yale L.J. at 2232.]

Strong community-police relations also makes it easier for police to do perform their duties. When law enforcement officers have earned the trust and respect of the community, community members are more likely to comply with police commands, come forward as witnesses to crimes, and report crimes that are perpetuated against them. See Tracey Meares & Tom Tyler, Policing: A Model for the Twenty-First Century, in Policing the Black Man 165 (Angela J. Davis ed., 2018) ("If the police are trusted, then people are more likely to give them the benefit of the doubt, allowing them to investigate and to respond to contentious law enforcement actions."); Rachel Macht, Should Police Misconduct Files be Public Record? Why Internal Affairs Investigations and Citizen Complaints Should be Open to Public Scrutiny, 45 Crim. L. Bull. 1006 (2009) ("Public confidence in police can result in a citizenry more likely to obey commands and more likely to cooperate with law enforcement."); Erik Luna, Transparent Policing, 85 Iowa

L. Rev. 1107, 1162 (2000) ("An individual who trusts law enforcement is more likely to follow its commands; conversely, an untrustworthy police force may confront a substantially less obedient citizenry.").

When police departments work to earn the community's respect and cooperation, that in turn reduces crime:

Clearly, focusing on public trust and confidence in the context of policing is not inconsistent with an agency's commitments to other goals, including crime reduction. . . . Studies similarly suggest that building trust in the police, the courts, and the law is as effective or even more effective a long-term crime-control approach. When people have greater trust in the police, they are more likely both to obey the law and to cooperate with the police and engage with them. Legitimacy facilitates crime control both directly, because it lower people's likelihood of committing crimes, and indirectly, because it increases public cooperation, which allows the police to solve more crimes.

[Meares & Tyler, Policing: A Model for the Twenty-First Century, at 167.]

Amici also know from first-hand experience that trust and respect promotes not only public safety, but also officer safety. A public that trusts and respects police officers will ensure that police departments have enough resources to perform their jobs safely and a sufficient budget to provide good salaries, benefits, and protective gear to officers. See Macht, 45 Crim. L. Bull. 1006 ("A public that has confidence in its police is more likely to encourage politicians to increase budgets for police. Restoring

trust in law enforcement agencies also results in less pressure from political figures on chiefs and, of course, less tension between communities and street cops.”)

These are not just the opinions of Amici or academic scholars, but also the lived experiences and views of most people who work in law enforcement. Studies have shown that ninety percent of police officers agree that it is important for an officer to “know the people, places, and the culture in the areas where they work in order to be effective at their job.” Adegbile, 126 Yale L.J. at 2240)). According to a national survey by the Police Executive Research Forum of nearly 300 police agencies that implemented some form of community policing, “more than ninety percent of agencies reported improved police-citizen cooperation, increased involvement of citizens, increased information from citizen to police, and improved citizen attitudes toward police.” Id. at 2245. “Almost eighty percent of agencies reported reduced police-citizen physical conflict.” Ibid.

B. Transparency Promotes Community Trust, While Secrecy Undermines It

Despite how critical it is that members of the public trust law enforcement, polls show that approximately half of the public actually lacks confidence in the police. See Erik Bakke, Predictive Policing: The Argument for Public Transparency, 74 N.Y.U. Ann. Surv. Am. L. 131, 147 (2018) (citing Jeffrey M. Jones,

In U.S., Confidence in Police Lowest in 22 Years, Gallup (Jun. 19, 2015)). When surveys are broken down by race, the level of trust in police dips even further. See Doug Criss, The One Thing That Determines How You Feel About the Police: Your Age, Race or Political Leaning Play a Role,⁶ CNN (July 14, 2017) (observing that 61 percent of whites have confidence in the police, while only 45 percent of Latinos and 30 percent of Blacks have confidence); Katherine J. Bies, Let the Sunshine In: Illuminating the Powerful Role Police Unions Play in Shielding Officer Misconduct, 28 Stan. L. & Pol'y Rev. 109, 120 (2017) ("Research consistently shows that people of color are more likely than white individuals to view law enforcement with suspicion and distrust.").

Transparency is a core component to building public trust. See Joseph A. Schafer, The Role of Trust and Transparency In the Pursuit of Procedural and Organizational Justice, 8 Journal of Policing, Intelligence and Counter Terrorism 135 (2013) ("[P]ublic support, cooperation or involvement is more likely to be found in [police] forces that have created higher degrees of external trust and transparency."). Shielding police disciplinary records from the public is one action that significantly reduces trust in law enforcement and causes the community to believe that corrupt officers are being protected and misconduct is being swept under

⁶ <https://cnn.it/2NY7P8H>

the rug. See Cynthia H. Conti-Cook, A New Balance: Weighing Harms of Hiding Police Misconduct Information from the Public, 22 CUNY L. Rev. 148, 166 (2019) (for the community to believe that police are being accountable, they need “access to the charges, common law decisions, proceedings, and outcomes in order to see justice for themselves”). Secrecy causes distrust in police to fester and has consequences that impact the ability of police officers to do their jobs effectively, such as the public expressing hostility toward the police or even calling to abolish the police altogether. See, e.g., Mariame Kaba, Yes, We Mean Literally Abolish the Police, N.Y. Times, June 12, 2020.⁷

Secrecy has other consequences. Research shows that when the police are perceived as untrustworthy or illegitimate, both police officers and prosecutors will be less effective at serving their community. Bies, 28 Stan. L. & Pol'y Rev. at 120. See also Macht, 45 Crim. L. Bull. 1006 (“If the public perceives the police as untrustworthy, prosecutors will have greater difficulty obtaining convictions in criminal cases where police officers are the sole witness.”). Thus, “increasing transparency by publicly disclosing misconduct records should increase community faith and make police officers more effective in protecting their community.” Bies, 28 Stan. L & Pol'y Rev. at 120. See also Conti-Cook, 22 CUNY L. Rev.

⁷ <https://nyti.ms/2ZCsZig>

at 166 (“[W]hen police processes are perceived as procedurally just, communities are more likely to cooperate with the police, and policing, in turn, is more effective.”).

In sum, transparency is a core component of community trust. The movant police unions’ opposition to the AG’s transparency directives will only work to their detriment, causing the public to believe they have something to hide and cannot be trusted. Secrecy will only further sow division and make it more difficult for police to perform their jobs. This is especially true in this moment, when the public is protesting on a daily basis in New Jersey and across the nation and calling for monumental reforms in policing. The AG responded to such calls for action. If this Court grants the police unions’ motions, the public will almost certainly view the decision as taking progress away from them and their distrust in police will only increase.

C. Members of the Community Deserve Access to Police Disciplinary Information So That They Can Determine Whether Police Departments Function the Way They Want Them to Function

Law enforcement agencies must always remember that “the police are the public and the public are police.” Dissel, The Roots of Policing (citing Peel’s Principle Seven). As LEAP Executive Director Neill Franklin has explained:

According to Sir Robert Peel of Great Britain, who is viewed by many of our police leaders as the father of modern policing, **the police are the public, and the public are the police.**

This is principle No. 7 of the nine Peelian Principles. Principle No. 2 states, "To recognize always that the power of the police to fulfill their functions and duties is dependent on public approval of their existence, actions and behavior, and on their ability to secure and maintain public respect."

In short, we exist because of the public and the work we do "for them" should be approved "by them." As such, the public should be informed of all that we do within the community. They must have access to reports of police behavior within the community, good and bad. This level of transparency is not only necessary for securing public respect – trust – but it is their right.

[Neill Franklin, Time For A 'Code Of Transparency' In Policing, Baltimore Sun, Mar. 1, 2017 (emphasis added).]

In that regard, police secrecy not only undermines the legitimacy of the police and makes policing less effective, but it also leaves the public in the dark and deprives the community from serving as an important "check" on *their* police departments. Welsh v. City & Cty. of San Francisco, 887 F. Supp. 1293, 1302 (N.D. Cal. 1995) ("The public has a strong interest in assessing . . . whether agencies that are responsible for investigating and adjudicating complaints of misconduct have acted properly and wisely."); Worcester Telegram & Gazette Corp v. Chief of Police of Worcester, 787 N.E. 2d 602, 607 (Mass. Ct. App. 2003) ("A citizenry's full and fair assessment of a police department's internal investigation of its officer's actions promotes the core

value of trust between citizens and police essential to law enforcement and the protection of constitutional rights.”). Simply put, police departments belong to the community and the police departments must accept that the community needs access to information about police internal affairs and disciplinary processes so that the public can ensure that they live up to the very high standards that are required of them.

The fact that New Jersey’s IA and police disciplinary systems have been locked away in complete secrecy for decades has only created a divide between the public and the police, causing both to believe that they are two separate entities whose interests are averse to each other. They should be one: the police are the public and the public are the police. The AG’s directives represent an initial step toward bridging that divide and allowing the public to become part of the police disciplinary process, as is the case in many other states. See Point II(C) of the ACLU-NJ’s brief. The police unions must embrace this transparency and not see disclosure as something at odds with their interests; inviting the public into the police disciplinary process will build better police-community relations and will result in a disciplinary process that is fairer to them. See Point II, infra.

II. TRANSPARENCY IN DISCIPLINARY PROCESSES WILL HELP PROTECT THE RIGHTS OF OFFICERS OF COLOR AND WILL IMPROVE THE OVERALL DISCIPLINARY PROCESS FOR ALL OFFICERS

It is no secret that New Jersey law enforcement officers are predominantly white and male. The 2016 Uniform Crime Report showed that only 10.6 percent of New Jersey's 36,290 police officers were women. Div. of State Police, 2016 Uniform Crime Report 174 (2016).⁸ Although there appears to be no similar statewide data available on the racial demographics of New Jersey police departments as a whole, a look at individual police departments reveals the lack of racial and ethnic diversity plaguing New Jersey policing:⁹

- The State Police is 77.5 percent white and 80.7 percent male, but the state is only 54.6 percent white and 48.9 percent male
- Paterson's police force is 14.8 percent Black and 17.9 percent Latino, but the city is 28.3 percent Black and 57.6 percent Latino.

⁸ <https://www.njsp.org/ucr/2016/index.shtml>

⁹ A disparity between the demographics police departments and the community violates the core Peelian Principle that "the police are the people and the people are the police." This in turn undermines the community's trust. "A visibly homogeneous police force that does not reflect the racial make-up of the community it patrols may engender resentment among the residents of that community" and can "lead to a breakdown when relations between the police department and the greater community are strained." Allan N. MacLean, The "Critical Mass" and Law Enforcement, 14 B.U. Pub. Int. L.J. 297, 301 (2005) ("The existence of a diverse police department can reassure a community that the department will not act in a discriminatory manner. This will, in turn, lead to even better policing, since community cooperation with police investigations leads to more solved crimes and a correlative reduction in criminal behavior.").

- Elizabeth's police force is just 9.6 percent Latino, but the city is nearly 60 percent Latino.
- Newark's police force is 26.5 percent black and 22.5 percent Latino, but the city is nearly 50 percent Black and 33.8 percent Latino.
- Jersey City's police force is 12.7 percent Black and 22.5 percent Latino, but the city is 23.9 percent Black and 27.6 percent Latino.
- Plainfield's police force is 10 percent Latino, but the city is 40 percent Latino.

See Office of the AG, Diversity & Inclusion Annual Report¹⁰ 26 (2017); Sergio Bichao, The Racial Gap Of N.J. Police Departments, MyCentralNJ.com, January 21, 2015.¹¹

Because of this lack of diversity, it can be especially daunting to work as a police officer in this State if one is not white or male. Policing in general is "not only a masculine culture" but one "dominated by a white, heterosexual, masculine perspective." Meghan E. Hollis, Accessing the Experiences of Female and Minority Police Officers: Observations from an Ethnographic Researcher, in Reflexivity in Criminological Research (2014). Black and Latino officers also work within a criminal justice system that has disproportionately arrested, incarcerated, and used force against communities of color for centuries, meaning that these officers know that their friends and family members

¹⁰ <https://bit.ly/2ZG6Srn>

¹¹ <https://bit.ly/3f4Stew>

have been or may be targeted by the very police departments in which they work, and sometimes they are even targeted themselves:

"Many of my members [of color] are angry, because [Eric Garner] could have been our son, our brother, our father," [said Noel Leader, co-founder of Blacks in Law Enforcement Noel Leader]. "When you're African-American, you understand that you have the uniform, [but] members of your families do not. So we are more sympathetic and more sensitive to this type of injustice than others are."

. . .

Cops of color know that out of uniform, they're just as susceptible to police aggression as any minority on the street – as are their family members. Stories of off-duty [B]lack and Latino cops being stopped and frisked, manhandled or even killed by fellow officers abound. Naturally that makes them more sensitive to the Ferguson and Staten Island cases, which are the most recent, visible examples of a systemic pattern of police exoneration after killing African-Americans. It also makes them, on the whole, more sensitive to protesters' cries of racism in the street, despite their trained poker faces.

[Aaron Miguel Cantú, Making Sense Of The Minority Police Officer Experience, Mashable, Dec. 18, 2014.¹²]

A 2017 study, which interviewed Black male police officers working in New Jersey police departments, provides important insight to the experiences of officers of color in this state. See Michael Armstrong Campbell, African American Male Police

¹² <https://bit.ly/31X0RsK>

Officers' Perceptions of Being Racially Profiled by Fellow Police Officers,¹³ Walden University (2017). Many of the officers reported that they “feel unworthy, believe they are treated as second class citizens, and believe that they are viewed as a departmental token”¹⁴ and that racial discrimination “resulted in limited opportunities within their own police agency, such as not being promoted to leadership positions.” Id. 59-60 (reporting that officers feel low morale, “hopelessness,” and like their complaints of discrimination are not taken seriously). NCLC has heard these same complaints from Latino officers.

Officers of color and women often complain that police internal affairs and disciplinary processes are unfair. See Rich Morin, et. al., Behind The Badge: Inside America's Police

¹³ <https://bit.ly/3izEGz4>

¹⁴ One officer's response highlights why an organization such as Amicus NCLC exist:

I must admit, a lot of times my morale was low, but I was able to depend on my fellow minority officers to give me a needed boost. I was a member of an organization with minority officers who were experiencing or had similar experiences in the past; they were able to relate to my situation. We spoke about each situation when it came up and steps that may be taken by others to help make them stay strong in that environment. It was a very good support group. I needed that group to survive.

[Campbell at 119.]

Departments, Pew Research Center (January 11, 2017) (discussion of survey of nearly 8,000 police officers from 100 police departments that revealed that white men are more likely to say that the disciplinary process in their agency is fair than are women or Black and Latino officers). A recent study by the *Boston Herald* of the Boston Police Department's disciplinary practices revealed that Black officers are disciplined at a substantially higher rate than white officers. See Matt Stout & O'Ryan Johnson, Black Boston Police Officers Facing Higher Disciplinary Rates than White Counterparts, Boston Herald, November 18, 2018 ("Black officers make up just 23 percent of the police force, and whites about two-thirds, the review found. But over the past two years an equal number of [B]lack and white officers – 14 of each – have faced suspensions, indicating blacks are being found in the wrong and disciplined at a dramatically higher rate."). Because New Jersey has kept IA and disciplinary information a complete secret for decades, it is difficult for scholars or journalists to study the racial disparities in police discipline that happen in this state.

Simply put, minority police officers know first-hand that the racial disparities that exist in arrests and incarceration often spill over into the police workplace. The current system of secrecy in New Jersey's police discipline is harmful to officers of color and deprives them of the information they need to protect themselves. As well-known civil rights lawyer Cynthia Conti-Cook

explains:

Contrary to the increased opacity many union representatives claim will improve the fairness of the disciplinary system, officers also lose out when police departments hide their misconduct. When departments conceal the average penalty for any specific offense, it prevents officers who have been treated unfairly from analyzing whether their penalty was disproportionately harsh. Investigations into racially biased or disproportionately punitive treatment could utilize data of reasonable or average penalties for similar misconduct. Yet, BuzzFeed's investigative reporter, attempting to write the story about a Black woman wrongly accused of misconduct by a supervisor, cannot access sufficient data for her in-depth article about racial discrimination in the police disciplinary process or even get a transcript from one hearing. This secrecy also allows abusive supervisors the same type of powerful, reliable impunity when disciplining officers that police officers have when arresting citizens. Increased transparency of the police disciplinary process could deter unjust prosecutions of police, as well as disproportionately harsh penalties for minor misconduct.

[Conti-Cook, 22 CUNY L. Rev. at 166.]

Transparency alone will obviously not fix the racial disparities of our criminal justice system or within our police departments, but it is the starting point to identifying problems so that solutions can be found. AG Law Enforcement Directives 2020-5 and 2020-6 are important steps to the type of full transparency that will allow organizations like Amicus NCLC to gather data to protect their members and show whether Latino officers or other

officers of color are disciplined more severely than their white counterparts.¹⁵ Transparency is especially important now, during this national reckoning on race.

CONCLUSION

Accordingly, Amici encourage the court to deny the police unions' motions to stay Attorney General Law Enforcement Directives 2020-5 and 2020-6.

Respectfully Submitted,

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/s CJ Griffin

CJ GRIFFIN, ESQ.

¹⁵ Of course, white officers will also benefit by being able to see whether the discipline they received was fair in comparison to other officers. Moreover, making major discipline available to the public will hopefully encourage investigators to investigate cases more carefully and discourage supervisors from imposing disparate or unfair penalties upon officers. Further, there are department-wide benefits as well; making it publicly known when discipline is imposed upon any particular officer can lead other officers to comply with departmental rules and regulations. "Because discipline plays a central role in teaching officers about the gravity of misconduct, it is important that a department's disciplinary decisions are known to officers and thus enable them to learn from these decisions." Carl B. Klockars, et al., Enhancing Police Integrity 258 (2007). In that regard, disclosure of disciplinary actions promotes better behavior because officers see the consequences of rules and regulations violations.