

**THE
BREATHE
ACT**



Rep. Jerry Nadler House Judiciary Committee Chair
2132 Rayburn House Office Building
Washington, DC 20515

Rep. Sheila Jackson Lee
Subcommittee on Crime, Terrorism, and Homeland Security Chair
2079 Rayburn House Office Building
Washington, DC 20515

Rep. Karen Bass
House Sponsor of H.R. 1280, George Floyd Justice in Policing Act of 2021 in the
117th Congress
2059 Rayburn House Office Building,
Washington, DC 20515

Sen. Cory Booker
Senate Sponsor of S.3912, the Justice in Policing Act of 2020 in the 116th Congress
717 Hart Senate Office Building
Washington, DC 20510

Dear Chairman Nadler, Chairwoman Lee, Representative Bass, and Senator Booker:

Across the country, Black communities are reeling from historic disinvestment, mass incarceration, and police abuse. Since Ferguson in 2014, the Movement for Black Lives (M4BL) has led the nationwide fight against this police violence and the systemic racial inequities that created our current moment. In addition, M4BL was central to coordinating the millions who took to the streets last year, expressing their frustration with the police brutality that cost George Floyd—and far too many others—their lives.

These millions made clear that they want justice and accountability. But they *also* made clear that they wanted something else: bold solutions that would transform their material circumstances and create true safety for all people. And the George Floyd Justice in Policing Act (JPA), though bearing the very name that sparked these protests, fails to meet the moment. **For this reason, we write this**

letter to oppose the Justice in Policing Act and demand new, comprehensive, forward-thinking legislation that truly meets our needs.

Over this summer, communities lifted up solutions that would truly address the root causes of police violence and terror. Moreover, their voices—the voices of people who are incarcerated, thousands of unnamed community organizers, the families of victims, and others who feel the harm of state violence every day—were essential to creating the political conditions that made the JPA possible. But in drafting its policy response, Congress did not embrace their solutions. **Instead, Congress developed a bill that entrenches the very same strategies that have consistently failed to address police abuse while omitting the bold, forward-looking policies that could meet the scale and scope of this moment.**

The way in which an issue is framed determines the solutions that are put forth. Through developing the [BREATHE Act](#), M4BL created a federal legislative roadmap for an “invest/divest” framework, which centers the needs of those communities that have been most harmed by police abuse, mass incarceration, and systemic disinvestment. The BREATHE Act is legislation that takes a holistic approach to community safety, investing in the non-carceral, non-punitive strategies that have actually worked to keep people safe while divesting from the jails, prisons, and police that have devastated our communities. Eliminating criminal-legal harm requires not small tweaks to a flawed system, but deep investments in health and mental health, safe housing, good jobs, basic financial security, environmental justice, and high-quality education. **“Justice in Policing,” by its very name, centers investments in policing rather than what should be front and center—upfront investments in communities and people.**

This bill doubles down on failed approaches to police reform. This is the primary reason why we feel that the JPA, as passed by members of the United States House of Representatives just last week, is the wrong fix for this moment. There are five central concerns that drive our opposition.

First, the JPA dumps new money into the very systems that have always served to kill, cage, and destroy the families of Black people.

While the BREATHE Act divests federal, state, and local resources from the carceral state, the JPA uses an approach that *requires* continued investments in the carceral state, while actually unlocking *new dollars* for law enforcement.

The JPA relies on funding incentives—i.e., the conditioning of federal grant dollars—as its way of spurring state and local change. However, the JPA places these funding conditions on the major grants that have fueled mass criminalization and incarceration at the local level, thereby tying its own effectiveness to continued funding of the carceral state.

Our focus should be on ending the Edward Byrne Memorial Justice Assistance and COPS grants, not leveraging those grants so that states and local governments will enact incremental reforms—reforms that have proven ineffective time and time again.

These two grants already prop up police departments nationwide. In less than 40 years police spending has increased by more than 200% via these grants, despite a sharp decline in crime rates since the early 1990s. And the JPA, rather than address this issue, allocates new money that these departments can use. That approach is both directionally wrong and actively dangerous to our people.

Second, the JPA wholly neglects the bold investments necessary to create real safety for all people, and especially Black communities.

At this point, we have overwhelming evidence of what actually keeps communities safe. Affordable housing. Good jobs. Financial security. Streetlights and parks. Violence interruption programs. Mental health treatment. And yet, the JPA includes only small grants that will barely begin to meet these needs. Worse, there are no assurances that these dollars will necessarily flow to non-carceral, non-punitive purposes, meaning that these grants could simply replicate existing harms of the carceral system.

By contrast, the BREATHE Act invests billions of dollars not only in non-911 crisis response, violence interruption, transformative justice, health clinics, treatment, and other non-carceral safety interventions, but also in education justice, health and family justice, environmental justice, economic justice, and housing justice. This holistic approach reflects a crucial message that the JPA lacks: real safety is rooted in meeting our communities' fundamental needs, not funneling resources into institutions that are causing and exacerbating harm.

Third, the JPA fails to center the voices that are most essential to this process: the community members who are closest to the problem.

Not only is the JPA not reflecting the demands of communities, the JPA is not even ensuring that grassroots organizations benefit from the insufficient grants that *do* go to community interventions. Unlike BREATHE, which funnels non-carceral safety dollars through community-led institutions and processes, the JPA has no requirements around participatory structures. In fact, the Act seems to suggest that national organizations—some of whom may have weak or inauthentic local presences—will particularly benefit from Department of Justice grants earmarked for community organizations. This will disadvantage the very grassroots groups that have been most active in holding our systems accountable and keeping communities safe.

Fourth, the Justice in Policing Act invests nearly \$1 billion into incrementalist reforms that have failed time and time again, embracing a “bad actor” approach that sets back real change.

The current crisis in policing is not caused by individual police officers. The current crisis is caused by the systemic injustices of an entire system. While individual officers must be held accountable, police violence and terror in Black communities will continue unless we roll back the budgetary excesses that have led to a mass divestment from our care infrastructure. Resources are not limitless. Therefore the surge in funding for policing over the last 40 years has both created the mass incarceration and police violence crisis in this country, and come at the expense of funding for hospitals, public health care, childcare, education, affordable housing, and environment.

The Justice in Policing Act is a policy that relies on mythical and outdated notions about the cause of police violence. The bill proposes to modify The Police Misconduct Statute and Section 1983, the law that makes it possible for individuals to sue law enforcement officers who violate their constitutional rights. Currently very few victims of police violence are successful in these civil cases. If JPA is made law, proponents argue, more families who have lost loved ones to police violence might win in civil court against those officers. We unwaiveringly support accountability for individual police officers who murder Black people and we support monetary damages, healing, and justice for grieving family members left behind. Yet the changes proposed by the JPA do little to ensure Black people and our children may live free from police violence to begin with. After-the-fact accountability is simply not enough.

Moreover, in its fixation on individual culpability the bill makes no systemic changes that will prevent the deaths of Black people at the hands of police. The

BREATHE Act, by contrast, addresses fundamental causes of police violence by scaling back the bloated and ineffective mechanisms of policing and incarceration and makes investments in non-punitive, non-carceral approaches to community care, healing, and safety. The BREATHE Act's attention to the preservation of Black life is not what we see animating the provisions of JPA. Additionally, the BREATHE Act meets JPA's individual accountability provisions and goes multiple steps further through the creation of a Police Accountability Grant Program that would incentivize states to create Police Violence Reparations Programs, make contracts between police unions and schools publicly available, eliminate state laws that protect police from being held liable in court, abolish state law enforcement officer bills of rights, and end the use of paid administrative leave when police are being investigated for physical, sexual, or racial violence.

The JPA irresponsibly legislates "solutions" that will maintain the status quo and could catalyze more police power and violence. For example, the bill establishes a training program for police departments on racial bias. Such training has [not been proven](#) to change individual officer behavior. This is why police racial bias training has been widely rejected by leading criminal justice reform advocates and experts as it makes matters worse by adding more money to the budgets of police departments, rewarding bad behavior. Similarly, the body cameras JPA mandates through the Police Camera Act provisions [do nothing to reduce use of force](#)— body cameras merely funnel more resources and surveillance tools into police departments.

Additionally the JPA bans federal use of no-knock warrants in drug cases, placing undue trust in the compliance of officers with a vague standard rife with loopholes. The bill bans federal use of chokeholds, ignoring the reality that police have killed Black people in this manner regardless of whether these bans are in place. A no knock warrant ban would not have saved Breonna Taylor's life, just like a ban on chokeholds did not save Eric Garner's life. The JPA fails to address the root causes and realities of policing in this country.

Fifth, even its strongest provisions are not strong enough to protect Black lives.

Even where the JPA has provisions that could help mitigate the harm of policing in Black communities, these provisions don't go nearly far enough. In every instance, they fall short of the standard that the BREATHE Act set.

- **The federal government has been sending tanks to community streets. This practice must end.**

Tanks and weapons of war don't belong in our communities—the very places where our children play. Sec. 365 of the JPA merely modifies the [harmful](#), [mismanaged](#), and [corrupt](#) 1033 program, which has transferred more than [\\$7.4 billion of equipment](#) to local police departments. We must abolish the program that made these weapons transfers possible and uproot this unconscionable practice root and branch.

Congress should adopt the BREATHE Act approach, which is to end the DOD 1033, 1122, and similar programs entirely.

- **Banning “no-knock” warrants wouldn't have saved Breonna Taylor—and the JPA doesn't even go this far.**

A “no-knock” warrant ban wouldn't have saved Breonna Taylor from being murdered, in cold blood, while sitting in her own home. What's more, Sec. 362 of the JPA doesn't even purport to address this issue comprehensively. The section, which bans “no-knock” warrants in drug cases only, doesn't include “quick-knock” warrants that have essentially the same effect.

Unlike the JPA, the BREATHE Act addresses the root issues that undergird no-knock warrant abuse: the devastating War on Drugs. BREATHE bans no-knock and quick-knock warrants entirely at the federal level while conditioning funding—not law enforcement money, but money for non-carceral programs that will actually support safety—on states and localities doing the same. More importantly, BREATHE has comprehensive provisions to truly end the War on Drugs. BREATHE adopts bold policies to advance drug decriminalization. BREATHE makes sweeping investments in treatment and health clinics. BREATHE promotes racial equity in marijuana legalization. And BREATHE creates a reparations commission to examine the War on Drugs' impacts and suggest specific redress for the individuals, families, and communities most harmed.

- **Banning chokeholds didn't save Eric Garner—and the JPA doesn't come close to banning such destructive practices adequately.**

Many jurisdictions, including some of the largest police departments, have already banned chokeholds, and these efforts have consistently [failed to keep people safe](#). New York made this change in 1993, nearly three decades before a police officer suffocated Eric Garner to death using a chokehold. In fact, the use of chokeholds by the NYPD [has only risen](#) since the ban was put into effect—in part because these bans, like most bans of police practices, are extremely difficult to enforce.

The BREATHE Act takes a different approach. As part of reducing the size, scope, and power of policing, BREATHE directly bans the federal government from using—and incentivizes state and local governments not to use—the [many, many tools and practices](#) (not just chokeholds) that currently claim Black lives, including TASERs, chemical sprays, tranquilizers, rubber bullets, and so much more. Moreover, BREATHE puts forward a completely different way of addressing problems. BREATHE invests in treatment and non-911 crisis response. BREATHE encourages states and local governments to decriminalize offenses—like selling loose cigarettes—that should not have a criminal response. BREATHE recognizes that deaths to police chokeholds don't just reflect a bad technique, but a bad model. Our response must match the scope of the real problem.

- **Suing individual officers won't fix flawed systems—and the JPA doesn't even end qualified immunity for all federal officers.**

The JPA ends qualified immunity for law enforcement officers. That's not enough. Suing individual officers won't fix systemic issues with how communities are policed. But to the degree that individual accountability will advance systemic change, *no* government official should be insulated from legal action when they violate people's rights. The JPA abolishes qualified immunity only for individuals who are serving law enforcement functions.

We believe that Congress should take the BREATHE approach, which addresses this broad issue at two levels. BREATHE bans qualified immunity for *all* government actors, as is accomplished in Representative Ayanna Pressley's recently reintroduced "[Ending Qualified Immunity Act](#)." But far more importantly, BREATHE makes much-needed, non-carceral investments to ensure that police harm doesn't happen in the first place. BREATHE advances state, local, and federal efforts to shrink police interactions overall, limiting instances where police violence can occur. BREATHE invests in violence prevention, harm reduction, and the other services, supports, and infrastructure able to prevent issues *before*

they arise. In short, BREATHE builds a framework that can prevent families from ever *having* to use qualified immunity—and, in so doing, creates a path to true safety.

We demand Congress commit to the eradication of police violence and the criminal legal system terror experienced by Black people through the passage of BREATHE Act policy.

The Justice in Policing Act is focused on police; our communities are focused on justice. Justice requires investing in the health, education, housing, economic justice, and environmental justice that our communities need, while divesting from the carceral state that has devastated too many people for far too long. At the federal level, it is no longer sufficient to implement the same tactics that have not worked for generations.

Moving forward, we encourage Senators to consider our concerns as they develop their version of the JPA. Senators should see the JPA as a bill needing dramatic improvement, not as a gold-standard that they can further water down. At the same time, we encourage the House to begin drafting bold, ambitious legislation that does not merely tweak a flawed paradigm, but makes the much-needed investments and policy changes to truly keep our communities safe.

It is incumbent upon the 117th Congress to think boldly, listen to communities, and adopt a policy solution that truly honors the life of George Floyd and the many others who have lost their lives to our violent system of policing, punishment, and incarceration.

We believe that the BREATHE Act is this solution. And we believe that the JPA, as passed by the House last week, falls dramatically short of this mark.

Sincerely,
The Movement for Black Lives