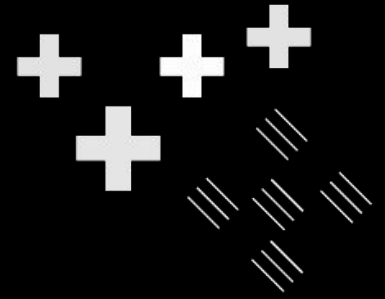




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The Civil and Human Rights Executive Order Progress Report

June 2023

About the Progress Report

The Civil and Human Rights Executive Order Progress Report (Progress Report) is a project of The Leadership Conference on Civil and Human Rights and The Leadership Conference Education Fund. The Leadership Conference on Civil and Human Rights is the nation's oldest and largest civil and human rights coalition of more than 230 national organizations. The Leadership Conference Education Fund was founded in 1969 as its education and research arm.

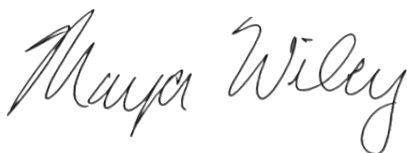
The Progress Report provides an overview of the Biden administration's use of executive orders to advance civil and human rights. It assesses the implementation of 41 directives contained in nine civil and human rights executive orders issued by the Biden administration. Status updates for most of the executive order directives are current as of March 7, 2023. For the Executive Order on Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety, the directives are current as of May 25, 2023.

The Progress Report is a complement to two additional publications:

- [Strengthening Democracy: A Progress Report on Federal Agency Action to Promote Access to Voting](#), issued on March 3, 2023 by a coalition of 53 organizations, evaluates 10 key agencies' progress on implementing the Executive Order on Promoting Access to Voting.
- [Executive Orders: An Overview](#), issued on June 12, 2023, provides an overview of executive orders broadly — what they are and how they are issued and implemented.

I would like to thank Danielle Root and Glenn Schlactus of Relman Colfax PLLC, the primary authors of this Progress Report and the overview. Staff assistance was provided by Meeta Anand, Nadia Aziz, Anita Banerji, Kanya Bennett, Josh Boxerman, Mattie Goldman, Patrick McNeil, Eunice Epstein-Ortiz, Peggy Ramin, Rob Randhava, Bree Spencer, Frank Torres, Chloé White, and Scott Simpson, who was an editor of the report. Overall supervision was provided by Corrine Yu and Jesselyn McCurdy. The report was designed by Celeste Jacobs.

We know that executive orders are only as strong as their implementation. This Progress Report makes broad recommendations to improve the implementation of critical civil and human rights executive orders. We hope policymakers and our colleagues across the country benefit from the report as we work toward our collective goal of advancing and protecting civil rights for all communities.



Maya Wiley

President and CEO

The Leadership Conference on Civil and Human Rights
The Leadership Conference Education Fund

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How the Assessment Was Conducted

In the Civil and Human Rights Executive Order Progress Report (Progress Report), nine executive orders are broken down by their directives and each is assessed for implementation. Status updates for most of the executive order directives are current as of March 7, 2023. For the Executive Order on Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety, the directives are current as of May 25, 2023. Implementation statuses may have changed as of the publication date.

The directives contained within the executive orders task agencies with taking concrete actions, revoking past executive orders, and creating new working groups and task forces.

Executive orders, their directives, and implementation statuses appear in table form. In most cases, directives appear word-for-word as they do within their respective executive orders. Some directives have been paraphrased for clarity and efficiency.

Status descriptions for directives contained within each table are color-coded based on whether the directive has been accomplished or partly accomplished.

The Progress Report notes upcoming implementation deadlines solely for reference purposes and omits deadlines that have already passed. A directive's status was not

assessed against meeting deadlines assigned by its corresponding executive order. *Although the administration should make all efforts to meet self-prescribed deadlines, the priority is ensuring these directives are completed — even if on a delayed timeframe.*

In determining a directive's implementation status, the authors relied only on public sources, including the Federal Register, White House and Executive Office of the President websites, federal agency websites, media sources, and academic and non-profit publications. There are no central repositories for tracking implementation of executive orders. The White House occasionally issues statements or summaries of its accomplishments in policy areas, but these status updates are infrequent and largely non-specific to executive orders.

Non-profit organizations and policy advocates have engaged in significant efforts to track implementation of many executive orders. Some groups are fortunate to have access to information through contacts in the executive branch. But these communication channels are often ad hoc and informal.

Federal agencies and entities are almost certainly doing more work to meet executive order mandates than what is publicized, but the lack of disclosure can make it difficult to discern. The public will remain in the dark until federal entities take meaningful steps to improve transparency.

Executive Summary

The Biden administration's executive action on civil and human rights has been a hallmark of its policy agenda over the last two years. Of the more than 100 executive orders the administration has issued, approximately half have civil rights implications, including on LGBTQ rights, fair labor protections, health care access, and immigration reform, among many others. With several pending challenges to civil rights at the Supreme Court, including on affirmative action, more executive actions may be needed to further strengthen and advance equity protections.

Most notably, this administration has publicly centered equity in its work, and its executive orders on advancing racial equity issued on January 21, 2021 and February 16, 2023 are groundbreaking. However, there is more the administration can and should do.

In many cases, these orders have been responsive to pressing policy needs, and their content has been fairly comprehensive. But that is not true across the board.

Advocates have noted that some executive orders do not go far enough or fail to address crucial issues. For instance, the president's sole executive order on voting, which has already been assessed in a complementary progress report, does not address ongoing efforts to undermine democratic institutions and processes, including election mis- and dis-information — nor does it seek to remedy pervasive attacks against election officials and poll workers that threaten nationwide shortages during future elections.¹ Similarly, President Biden's Executive Order on

Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety does not address all areas of concern to civil rights advocates.

Criticisms have been leveled at the administration for ignoring some policy areas altogether or moving too slowly. Executive orders have not been issued on protections against housing discrimination, fair lending policies, and consumer protections. And while this year the administration acknowledged that emerging threats like algorithmic bias and discrimination deserved close scrutiny by agency civil rights offices, it has not yet issued an executive order focused on artificial intelligence (AI).²

President Biden deserves much credit for issuing these orders, but issuing them is just the first step. Follow-through and implementation are equally — if not more — important. Few of the directives assessed have been fully implemented, and some have seen only incremental progress. Among the 41 directives assessed, only 11 have been fulfilled in their entirety, while the rest appear to have been only partly accomplished — and to varying degrees.

From those assessments, some patterns emerge:

- The administration performs relatively well on implementing executive order directives that establish working groups or task forces and those requiring reports on distinct subject matters.

- A specific targeted directive assigned to a singular agency or entity is more likely to be fulfilled than directives that are vaguer and more broadly framed.
- The administration tends to issue guidance and make public statements or commitments to fulfill an order mandate, rather than pursuing more substantive solutions.
- For directives requiring compliance by all federal agencies, it is not evident all agencies have conformed.
- The Biden administration has revoked numerous past executive orders and rules issued under the Trump administration, but it is not evident how those revocations are being carried out by federal entities.

Many of these patterns appeared across all executive orders examined in the Progress Report. The Biden administration should consider these patterns when determining how to craft future orders and identifying directives requiring attention. We believe all of President Biden's executive orders should be seen through to completion. However, certain executive orders, given their urgency and/or overall lack of publicly available evidence of implementation, must be prioritized. There is still time to accomplish this, but urgency is required. Three executive orders, in particular, warrant swift implementation:

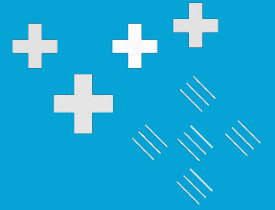
- **Executive Order on Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety:** Issuance of this order was an important step forward in the fight for police accountability and reform. By establishing a national law enforcement accountability

database, taking steps to prevent white supremacists from federal law enforcement, and beginning to move toward reforms contained in the George Floyd Justice in Policing Act, the executive order sent a message that policing must be fairer and more accountable. While progress has been made on the executive order, there is considerably more work left to be done.

- **Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government and Executive Order Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government:** These orders are groundbreaking. They require each agency to assess whether underserved communities and their members face systemic barriers in accessing agency programs, policies, benefits, and opportunities and to provide the White House with a report identifying new policies, programs, and regulations that could help address them. President Biden signed Executive Order 13985 on his first day in office and, by now, most if not all directives should be complete. To the administration's credit, it issued a follow-up executive order on February 16, 2023, which clarified and sharpened the first order (as well as an additional order advancing equity on sexual orientation and gender identity) and empowered officials within agencies to move forward assertively on accomplishing its aims.

For these orders to be fully implemented, the White House — as well as federal agencies — must significantly bolster oversight and accountability. The February 2023 racial equity executive order is a strong starting point. It urges agencies to designate teams responsible for implementation, to bolster civil rights offices, and to ensure that civil rights officers report to agency heads. It also creates a White House Steering Committee on Equity. Together, these bodies and designees are charged with asserting a whole-of-government approach to advancing equity and provide a promising path forward for implementation.

While meaningful progress has been made to carry out these orders' directives, more work must be done and with greater urgency to complete implementation before the conclusion of the president's term.



ASSESSMENT

Overall Implementation of Civil Rights Executive Orders

President Biden's record on executive orders demonstrates commitment to civil and human rights, but gaps remain in implementation. Over the next 18 months, the administration must act more assertively and expediently in issuing and implementing rights-affirming executive orders.

In all, President Biden has issued more than 100 executive orders since taking office, and approximately half have implications for civil rights — including for LGBTQ rights, fair labor protections, health care access, and immigration reform, among many others. In many cases, these orders have been responsive to pressing policy needs, and their contents have been fairly comprehensive.

Roughly halfway through his presidential term, President Biden has issued fewer executive orders than many past presidents at the same point in time. Still, if he maintains this pace, President Biden remains on track to surpass the 171 combined average number of executive orders issued per presidential term among the last four presidents. This leaves ample opportunity to continue progress in using executive orders to achieve civil rights goals.

Pending Supreme Court cases in the 2022-2023 term also threaten civil rights, including on affirmative action. It may be incumbent on the administration to take further executive action to affirm equity. Should this occur, the Biden administration — and the nation — would benefit from further actions that build upon the civil rights executive orders that have already been issued.

President Biden has relied on executive orders to revoke, amend, and supersede numerous policies issued under the Trump

administration. Such revocations reinstated equity and anti-bias training for federal employees and contractors and reversed anti-worker policies that disempowered federal employees.

President Biden has also issued executive orders to affirmatively accomplish his administration's civil rights policy objectives. Many of these executive orders reform the government's approach to racial equity, police oversight, LGBTQI+ rights, and voting rights. Other executive orders issued by President Biden aim to establish humane immigration policies and ensure universal access to quality and affordable health care. Some of these orders tackle reform at a granular level by focusing on specific issues of concern within these broad policy areas. For example, the Executive Order on Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety contains multiple distinct directives addressing body-worn cameras, controlled equipment, reentry policies, reporting deaths in custody, a new National Law Enforcement Accountability Database, and many others.

More than Just Executive Orders

To supplement his executive orders, President Biden has relied on other policymaking tools — such as memoranda, proclamations, rulemakings, and other instruments — to accomplish his civil rights policy goals. Take, for example, the administration's approach to protecting and advancing anti-discrimination protections for LGBTQI+ people. One month after signing the Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation, President Biden issued the Memorandum on Advancing the Human Rights

of Lesbian, Gay, Bisexual, Transgender, Queer, and Intersex Persons Around the World. The memorandum pursued separate goals from the executive order, but it served to complement the domestically focused order by expanding LGBTQI+ rights globally. The administration has also issued periodic proclamations around LGBTQI+ Pride Month and Transgender Day of Visibility. These proclamations have celebrated LGBTQI+ people, highlighted actions taken by executive branch entities to promote LGBTQI+ rights, and called on Congress to pass legislation to do the same.

President Biden has made generous use of these supplemental tools, particularly proclamations, as a means to communicate and further his administration's priorities. There are both benefits and drawbacks to relying on these instruments instead of executive orders. One significant benefit to this approach is that they may be issued with greater expediency depending on their content. Time is of the essence when it comes to pressing policy needs, and processes for developing and negotiating executive orders can be detrimentally time consuming.

Indeed, more than one year elapsed after President Biden took office before the administration issued its executive order on police reform. Similarly, it was two months following a leak of the U.S. Supreme Court's draft opinion in *Dobbs v. Jackson Women's Health Organization* that the administration issued its Executive Order on Protecting Access to Reproductive Healthcare Services, followed nearly one month later by the Executive Order on Securing Access to Reproductive and Other Healthcare Services.³

There are, however, drawbacks to relying on presidential instruments such as memoranda

“To supplement his executive orders, President Biden has relied on other policymaking tools... to accomplish his civil rights policy goals.”

and proclamations in place of executive orders. Proclamations tend to lack the substance of executive orders and are typically more ceremonial in nature. Meanwhile, presidential memoranda lack the formality and legal heft of executive orders. Both tend to be more narrowly focused and limited in reach compared to executive orders. Thus, instruments such as these should be used to supplement — but not as a substitute for — executive orders on pressing civil rights matters that call for sweeping reform. The Biden administration should keep these factors in mind when deciding between which tools to use to advance rights-affirming policies.

Potential for Greater Use of Civil Rights Executive Orders

Overall, President Biden's record on issuing civil rights executive orders is to be commended. Generally, these orders have been responsive to pressing policy needs and their contents have been relatively robust.

Still, there have been some shortcomings. Some civil rights orders fail to account for crucial issues or lack the comprehensiveness needed to safeguard closely held rights. President Biden's sole executive order on voting access — which The Leadership Conference assessed in a complementary project — does not address ongoing efforts to undermine democratic institutions and processes, including election mis- and disinformation, nor does it address pervasive threats against election officials and poll workers.⁴ Similarly, President Biden's executive order on policing does not address the doctrine of qualified immunity nor the death penalty — nor does the order tackle the prevalence of white supremacy and extremism within law enforcement circles. Moreover, the order is light on directives centered on the experiences of victims of and communities experiencing higher rates of violence by law enforcement. Additional action is needed to fill these gaps and supplement those already issued.

In other instances, the administration has altogether failed to adopt executive orders on certain important civil rights matters or has moved too slowly. To be sure, some action has been taken by the administration in these areas. On fair housing, the president issued a Memorandum on Redressing Our Nation's and the Federal Government's History of Discriminatory Housing Practices and Policies and established the Property Appraisal and Valuation Equity (PAVE) task force to address racial and ethnic bias in home valuations. Additionally, agencies such as the Department of Housing and Urban Development have instituted meaningful policy changes to improve access to affordable housing, while a working group was launched to study homelessness among LGBTQ communities.

On technology policy, the White House Office of Science and Technology Policy put forth a Blueprint for an AI (artificial intelligence) Bill of Rights that emphasizes rights like privacy and freedom from algorithmic discrimination. It also issued a broader racial equity executive order on February 16, 2023 urging that civil rights offices be consulted when the government uses automated systems or artificial intelligence and that those tools are used “in a manner that advances equity.” However, the Blueprint for an AI Bill of Rights is nonbinding, and the February 2023 order needs to be implemented; acting on these to make the blueprint binding policy is an important next step. These are just a few examples of potential opportunities the Biden administration could pursue through executive orders that would strengthen and expand upon its body of civil rights orders.

From these assessments, several patterns emerge:

- The administration performs relatively well on implementing executive order directives that establish working groups or task forces and those requiring reports on distinct subject matters.
- A specific targeted directive assigned to a singular agency or entity is more likely to be fulfilled than directives that are vaguer and more broadly framed.
- The administration tends to issue guidance and make public statements or commitments to fulfill an order mandate, rather than pursuing more substantive solutions.

- For directives requiring compliance by all federal agencies, it is not evident all agencies have conformed.
- The administration has revoked numerous past executive orders and rules under the Trump administration, but it is not evident how those revocations are being effectuated by federal entities.

On Track: Establishment of Task Forces and Working Groups

Directives evaluated for this report requiring the establishment of a task force or working group — such as the Working Group on Equitable Data, Interagency Steering Group on Native American Rights, and Federal Interagency Alternatives and Reentry Committee — have mostly been accomplished or are on track to be accomplished. For some, the work has been slow or is still in its early stages — but has been undertaken.

Executive order directives requiring distinct federal groups or entities to issue reports on singular topics — such as equitable data collection and usage and avenues for encouraging worker power — have also mostly been fulfilled.

Agency Compliance: Perhaps the Most Persistent Problem

Agency compliance is a persistent problem across all of the executive orders assessed within this report. The problem is especially pronounced with directives that task all agencies or “each agency” with performing assessments of internal policies or developing strategic plans for implementing affirmative policies and programming. Executive orders examined in this report require “each agency” to assess and report on solutions for improving

equitable access to government services, expanding opportunities to register and vote, and for complying with Title VII and federal anti-discrimination policies — but not every agency has yet to comply. Although some agencies are clearly doing so, there is little evidence of others having done the same.

In general, the more specific and targeted the directive, the better its chances of being implemented. Directives narrowly targeted at a singular agency and that precisely assign tasks are often more successful and implemented on faster timelines.

Serious questions as to agency compliance arise with respect to effectuating revocations of rules and executive orders issued by prior administrations. Some agencies have announced steps they have taken to dismantle invalid processes and policies. For example, in response to President Biden’s revocation of President Trump’s order restricting unconscious bias trainings, the Department of Labor’s Office of Federal Contract Compliance Programs announced it had disassembled hotlines that had been created during the Trump administration for intaking complaints against such trainings. For most revocations, however, there is limited evidence they are being effectuated by all agencies.

The administration should consider these patterns in implementation when determining how to craft future executive orders and to identify directives that need attention.

If the Biden administration is to fulfill the promises it has made with respect to civil rights, it must significantly bolster oversight and accountability from within the White House and from within federal agencies. Insufficient oversight and pressure are being

applied currently to ensure executive orders are being implemented to full effect. If the White House and agencies cannot guarantee compliance, Congress or independent bodies must step in to hold officials accountable. The Government Accountability Office publishes live updates on the administration's implementation of criminal justice reform recommendations.⁵ A similar tracking mechanism could be used to perform oversight of the administration's implementation of executive orders.

More Transparency is Vital

Finally, the administration must make every effort to address the pervasive lack of public information on how executive orders are being implemented across government. Information scarcity is a significant problem that prevents the public from knowing whether executive order directives have been acted upon and to what extent. On this point, it bears repeating that there is no public centralized database for agencies to report their progress on carrying out executive orders. Rather, an individual interested in learning implementation status will typically discover — if they are lucky — the following: an agency press release committing to establish corresponding policies or programming, but lacking evidence of follow-through; passing remarks by an agency official referencing a working group and indicating its existence without additional context; or a guidance document laying out suggestions for how to effectuate an order, but without information on agency compliance. In limited circumstances, an agency or the White House may release a summary document with specific steps they have taken with respect to a policy area, which can be cross-referenced back to directives contained within one or more executive orders. Agencies engaged in

rulemaking may explicitly reference the order from which the rulemaking derives. In many cases, however, no information is available. Even if a federal agency or entity is doing significant work to effectuate an executive order, it is unknown to the public, thereby undermining the overall impact of these efforts.

Agencies that have acted to implement executive order directives must do a better job of publicizing their efforts and tying them explicitly to the orders they fulfill. Agencies should consider creating platforms on their websites dedicated to tracking and announcing progress on executive order directives. Relatedly, the White House should consider establishing a publicly accessible central repository for executive order implementation across the federal government. The repository could operate out of the Office of Management and Budget or the Office of Information and Regulatory Affairs (OIRA). Their established involvement in executive order processes should enable this function, and OIRA already tracks the status of regulatory actions. It may be able to dual-purpose the same software to track executive order implementation. As another way to promote transparency, the White House should consider publishing annual or biannual public reports accounting for implementation progress on each of its executive orders.

A Possible Blueprint to Further Advance Equity

On February 16, 2023, the administration issued the Executive Order on Further Advancing Racial Equity and Support for Underserved Communities Through The Federal Government. This order clarifies and

sharpens the administration's day one Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government and provides a possible blueprint for more efficiently implementing all civil rights executive orders.

The February 2023 order contains provisions that apply to several civil rights executive orders which, if applied even more broadly, could address key weaknesses outlined in this Progress Report. This includes:

- **Identifying specific agencies responsible for acting.** A blanket order calling on all or each agency to take action could mean that around 400 agencies could all be responsible, leading to challenges with accountability and follow-through. The February 2023 order names 23 specific agencies that are required to take action and the specific steps that are required of those agencies.
- **Identifying and empowering decision-makers within agencies charged with carrying out an order's mandates.** The February 2023 order requires named agencies to designate "Agency Equity Teams" that will work with the agency, the Executive Office of the President, and the Office of Management and Budget to execute the mandates of the order.
- **Identifying White House leadership responsible for coordination and oversight.** The February 2023 order also creates the White House Steering Committee on Equity made up of key personnel in the Executive Office of the President charged with coordinating and overseeing the implementation of multiple

civil rights orders, including on higher education, on the environment, and on racial and gender equity.

- **Elevating, resourcing, and requiring consultation of civil rights offices across agencies.** The February 2023 order urges named agencies to elevate their senior civil rights official to answer directly to the agency head. Furthermore, it urges that these offices are properly staffed and consulted on discrimination via artificial intelligence and automation, language and disability access, and engagement with civil rights and community-based organizations.

If implemented fully, the February 2023 order appears to provide a path forward for stronger and more effective civil rights protections across the federal government.

Conclusion

Since taking office, President Biden has rightly centered equity in his issuance of executive orders. While meaningful progress has been made to carry out these orders' directives, more work must be done and with greater urgency.

The executive orders President Biden has issued contain many strong, rights-advancing policies and initiatives, but the public cannot benefit if these are not met with equally strong implementation, enforcement, and transparency. There are promising signs that the administration can meet the moment, but it must act quickly and decisively.

ASSESSMENT I.

Implementation of the of the Executive Order on Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety

Issued on May 25, 2022

Introduction

On May 25, 2022, President Biden issued the Executive Order on Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety.

Issuance of this order was an important step forward in the fight for police accountability and reform. By establishing a national law enforcement accountability database, taking steps to prevent white supremacists from joining federal law enforcement, and beginning to move toward reforms contained in the George Floyd Justice in Policing Act (which Congress failed to enact despite widespread calls for policing to be fairer and more accountable), the executive order sent a message that policing must be fairer and more accountable.

Of the executive orders assessed within this Progress Report, this is the broadest and also the most difficult to assess for implementation status. We assessed the implementation status of 19 directives, only two of which were completed, with the remaining 17 in various stages of implementation. Most directives assessed in this executive order contain multiple deliverables, and it is clear that — while many directives fall short of full implementation — the Department of Justice has made progress.

The Leadership Conference coalition has been closely following and advocating for implementation to ensure that the order has the impacts it is intended to have and that it becomes the beginning of greater reforms — not the end. But first, the administration must move quickly to ensure full implementation and transparency.



Assessment Summary

For this executive order, the vast majority of directives are partially complete. It is essential that federal agencies continue toward full and transparent implementation on all directives.

For some directives, their status is clear, especially for the updated guidance documents and reports leading up to the one-year anniversary of the executive order's release on May 25, 2023. For other directives, clues about their status must be derived from public comments by agency officials or conclusions drawn from agency press releases, but rarely are these directly on point. This has serious implications for transparency and oversight — characteristics already lacking within law enforcement generally, and which this order aimed, in part, to address.

Several directives require agencies to submit reports or update guidance documents on various topics, including addressing death in custody, weaponry and property acquisitions, no-knock entries, and body-worn cameras. Some agencies have complied with these requirements as evidenced by published documents. It is unknown whether published policies are being actively enforced and adhered to by all federal law enforcement personnel.

The Department of Justice and other law enforcement agencies have taken steps to carry out directives pertaining to data collection, assessing the civil rights implications of certain technologies, prohibiting the transfer of military-style weapons to local law enforcement, and creating accreditation standards to encourage local law enforcement to adopt policies consistent with the executive order. There are also efforts underway aimed at promoting

successful reentry for formerly incarcerated people. For example, agencies are evaluating existing data collection practices around incidents involving use of force, serious bodily injury or death, and discrimination and bias on the part of law enforcement personnel. Some agencies are pursuing initiatives that would improve job readiness and educational attainment for individuals who are currently detained.

It is important to note that while efforts to address barriers to reentry in the executive order are laudable, there is much more to do — beyond the scope of the executive order — to ensure resources and supportive services are available to formerly incarcerated people currently on probation or supervised release. Continued evaluations are necessary to identify existing gaps, direct resources, and design effective strategies to help ensure access to housing, education, and employment — all of which are essential to successful reentry.

Many directives have yet to be fully completed, though substantial progress representing significant time and resource investments from the DOJ have clearly been made. The DOJ has also taken steps to include some stakeholders in the implementation process who were able to provide input into the process. It is our hope that this approach continues through implementation and beyond. Fulfilling the executive order is only a first step. For example, in one of the two sections that have been completed, it is clear that additional work is necessary to fully address the concerns of stakeholders regarding the need to prioritize alternative response. It is essential for agencies and advocates to continue to push for full implementation and to improve and refine policing standards beyond the initial goals of the executive order.

Assessment of Specific Directives

Below is a granular analysis of the status of the directives that were assessed and where each of these directives stand based on publicly available information.

Accomplished

DIRECTIVE:
Sec. 14(a), (b).

(a). The Attorney General and the Secretary of Health and Human Services, in coordination with the heads of other agencies and after consultation with stakeholders, including service providers, nonprofit organizations, and law enforcement organizations, as appropriate, shall assess and issue guidance to State, Tribal, local, and territorial officials on best practices for responding to calls and interacting with persons in behavioral or mental health crisis or persons who have disabilities.

(b). The assessment shall draw on existing evidence and include consideration of co-responder models that pair law enforcement with health or social work professionals; alternative responder models, such as mobile crisis response teams for appropriate situations; community-based crisis centers and the facilitation of post-crisis support services, including supported housing, assertive community treatment, and peer support services; the risks associated with administering sedatives and pharmacological agents such as ketamine outside of a hospital setting to subdue individuals in behavioral or mental health crisis (including an assessment of whether the decision to administer such agents should be made only by individuals licensed to prescribe them); and the Federal resources, including Medicaid, that can be used to implement the identified best practices.

IMPLEMENTATION:

(a), (b). Guidance was released in May 2023.⁶

Accomplished

DIRECTIVE:

Sec. 17(a).

(a). The Attorney General shall, in consultation with the Director of Office of Management and Budget, submit a report to the President summarizing:

(i). the rehabilitative purpose for each First Step Act expenditure and proposal for the prior and current fiscal years, detailing the number of available and proposed dedicated programming staff and resources, the use of augmentation among Bureau of Prisons staff, and Bureau of Prisons staffing levels at each facility;

(ii). any additional funding necessary to fully implement the rehabilitative purpose of the First Step Act, ensure dedicated programming staff for all prisoners, and address staffing shortages in all Bureau of Prisons facilities; and

(iii). the following information on the Bureau of Prisons' risk assessment tool, Prisoner Assessment Tool Targeting Estimated Risk and Needs (PATTERN): (A) the number of individuals released early due to Earned Time Credits who were subsequently convicted and sentenced, as defined by United States Sentencing Guideline sec. 4A1.1(a), in the year following their release, disaggregated by their Prisoner Assessment Tool Targeting Estimated Risk and Needs (PATTERN) risk level category of "Minimum," "Low," "Medium," or "High" at time of release; (B) an assessment of any disparate impact of the Prisoner Assessment Tool Targeting Estimated Risk and Needs (PATTERN), including the weighting of static and dynamic risk factors and of the statutorily enumerated offenses and prior convictions that render individuals ineligible to earn time credits; and (C) a strategic plan and timeline to improve the Prisoner Assessment Tool Targeting Estimated Risk and Needs (PATTERN), including by addressing any disparities and developing a needs-based assessment system.

IMPLEMENTATION:

(a). The report was released in May 2023.⁷

Partly Accomplished

DIRECTIVE:

Sec. 2(a), (b), (c), (d), (e), (f).

(a). The Attorney General shall issue guidance to State, Tribal, local, and territorial law enforcement agencies regarding best practices for conducting independent criminal investigations of deaths in custody that may involve conduct by law enforcement or prison personnel.

(b). The Attorney General shall assess the steps necessary to enhance the Department of Justice's capacity to investigate law enforcement deprivation of rights under color of law, including through improving and increasing training of Federal law enforcement officers, their supervisors, and Federal prosecutors on how to investigate and prosecute cases involving the deprivation of rights under color of law. The Attorney General shall also, as appropriate, provide guidance, technical assistance, and training to State, Tribal, local, and territorial investigators and prosecutors on best practices for investigating and prosecuting civil rights violations under applicable law.

(c). The Attorney General shall consider ways in which the Department of Justice could strengthen communication with State Attorneys General to help identify relevant data, complaints from the public, and other information that may assist the Department of Justice's investigations of patterns or practices of misconduct by law enforcement officers, including prosecutors. The Attorney General shall also develop training and technical assistance for State, local, and territorial officials who have similar investigatory authority.

(d). The heads of all Federal law enforcement agencies shall assess whether any of their respective agency's policies or procedures cause unwarranted delay in investigations of Federal law enforcement officers for incidents involving the use of deadly force or deaths in custody, including delays in interagency jurisdictional determinations and subject and witness interviews, and shall, without abrogating any collective bargaining obligations, make changes as appropriate to ensure the integrity and effectiveness of such investigations. The Attorney General, the Secretary of Homeland Security, and the heads of other executive departments and agencies with law enforcement authority shall report to the President what, if any, changes to their respective policies or practices they have made.

(e). The Attorney General shall instruct the Federal Bureau of Investigation and all United States Attorneys to coordinate closely with the internal oversight bodies of Federal law enforcement agencies to ensure that, without abrogating any collective bargaining obligations, for incidents involving the use of deadly force or deaths in custody, initial investigative efforts (including evidence collection and witness interviews) preserve the information required to complete timely administrative investigations as required by the Death in Custody Reporting Act of 2013 and agency use-of-force guidelines.

(f). The heads of all Federal law enforcement agencies shall assess whether any of their respective agency's policies or procedures cause unwarranted delay or inconsistent application of discipline for incidents involving the use of deadly force or deaths in custody, and shall, without abrogating any collective bargaining obligations, make changes as appropriate. Within 240 days of the date of this order, the Attorney General, the Secretary of Homeland Security, and the heads of other Federal law enforcement agencies shall report to the President what, if any, changes to their respective policies or practices they have made.

IMPLEMENTATION:

(a). This report was published in May 2023.⁸

(b), (c). Per the DOJ fact sheet released on the one-year anniversary of the executive order on policing (May 25, 2023), “Pattern and Practice and Civil Rights Investigations: Strengthened communication with State Attorneys General on pattern and practice investigations and enhanced protocols for federal criminal investigations of federal civil rights violations by law enforcement officers.”⁹ These subsections did not require a public facing report to document completion. The DOJ should document and make publicly available evidence that this has been completed to improve transparency.

(d), (f). A single report was published in May 2023 to satisfy both 2(d) and 2(f).¹⁰

(e). Publicly available evidence of implementation was not found.

Partly Accomplished

DIRECTIVE:

Sec. 3(a), (b), (c), (d).

(a). The Director of the Office of Personnel Management shall convene and chair an interagency working group to strengthen Federal law enforcement recruitment, hiring, promotion, and retention practices, with particular attention to promoting an inclusive, diverse, and expert law enforcement workforce, culminating in an action plan to be published within 365 days of the date of this order. The interagency working group shall consist of the heads of Federal law enforcement agencies and shall consult with other stakeholders, such as law enforcement organizations. The interagency working

group shall, to the extent possible, coordinate on the development of a set of core policies and best practices to be used across all Federal law enforcement agencies regarding recruitment, hiring, promotion, and retention, while also identifying any agency-specific unique recruitment, hiring, promotion, and retention challenges. As part of this process, the interagency working group shall:

i. assess existing policies and identify and share best practices for recruitment and hiring, including by considering the merits and feasibility of recruiting law enforcement officers who are representative of the



communities they are sworn to serve (including recruits who live in or are from these communities) and by considering the recommendations made in the Federal law enforcement agencies' strategic plans required under Executive Order 14035 (Diversity, Equity, Inclusion, and Accessibility in the Federal Workforce);

ii. assess existing policies and identify and share best practices for promotion and retention, including by identifying ways to expand mentorship and leadership development opportunities for law enforcement officers;

iii. develop best practices for ensuring that performance evaluations and promotion decisions for Federal law enforcement officers include an assessment of the officer's adherence to agency policies, and that performance evaluations and promotion decisions for supervisors include an assessment of the supervisor's effectiveness in addressing misconduct by officers they supervise; and

iv. develop best practices for conducting background investigations and implementing properly validated selection procedures, including vetting mechanisms and ongoing employment screening that, consistent with the First Amendment and all applicable laws, help avoid the hiring and retention of law enforcement officers who promote unlawful violence, white supremacy, or other bias against persons based on race, ethnicity, national origin, religion, sex (including sexual orientation and gender identity), or disability. Federal agencies exercise control, such as joint task forces or international training and technical assistance programs, including programs managed by the Department of State and the Department of Justice.

(b). The heads of Federal law enforcement agencies shall update and implement their policies and protocols for recruiting, hiring, promotion, and retention, consistent with the core policies and best practices. Such policies and protocols shall include mechanisms for Federal law enforcement agencies to regularly assess the effectiveness of their recruitment, hiring, promotion, and retention practices.

(c). The heads of Federal law enforcement agencies shall develop and implement protocols for background investigations and screening mechanisms, consistent with the best practices identified and developed pursuant to the interagency working group action plan, for State, Tribal, local, and territorial law enforcement participation in programs or activities over which Federal agencies exercise control, such as joint task forces or international training and technical assistance programs, including programs managed by the Department of State and the Department of Justice.

(d). The Attorney General shall develop guidance regarding best practices for State, Tribal, local, and territorial law enforcement agencies seeking to recruit, hire, promote, and retain highly qualified and service-oriented officers. In developing this guidance, the Attorney General shall consult with State, Tribal, local, and territorial law enforcement, as appropriate, and shall incorporate best practices identified by the interagency working group on recruitment, hiring, promotions and retainment.

IMPLEMENTATION:

(a). Per the White House fact sheet released on the one-year anniversary of the executive order on policing (May 25, 2023), “Strengthening recruitment, hiring, promotion, and retention of law enforcement officers. An Office of Personnel Management (OPM)-led working group of federal law enforcement agencies has developed an action plan identifying a set of core policies and best practices to be used across all federal law enforcement agencies regarding recruitment, hiring, promotion, and retention. The working group also identified best practices for performance evaluations and promotion decisions for federal law enforcement officers, as well as for conducting background investigations and implementing properly validated selection and screening procedures.”¹¹

(b). The executive order set out a deadline of 180 days from the publication of the Interagency Working Group’s report. Publicly available evidence of implementation was not found.

(c). Publicly available evidence of implementation was not found.

(d). In June 2022, the Department of Justice’s Community Oriented Policing Services solicited applications for “FY22 Innovations in Recruitment and Hiring.” Funding will be provided to an “organization to develop recruitment and hiring resources (videos, toolkits, publications, podcasts, etc.) that can be shared with the broader law enforcement field and provide technical

assistance to help law enforcement agencies, in particular those funded through the COPS Hiring Program (CHP), implement improvements to increase their capacity to attract and select the best candidates and develop creative and engaging opportunities to market policing positions and expand the pool of potential applicants for their agencies.” It is not evident what these resources will involve, though the division’s website states it is “committed to advancing work that promotes civil rights and racial equity, increases access to justice, supports crime victims and individuals impacted by the justice system, strengthens community safety and protects the public from crime and evolving threats, and build trust between law enforcement and the community.”

In October 2022, the Department of Justice Bureau of Justice Assistance released a Blueprint for Recruitment and Retention in the 21st Century. Among the report’s recommendations are attracting candidates who are representative of the communities that the agency serves and systematically train, support, and promote officers who reflect the values of the agency and the communities in which it serves. The blueprint notes that it “is a starting point for developing a comprehensive approach to recruitment and retention for law enforcement agencies.”

This does not amount to formal guidance required by the order, and the interagency working group referenced in the directive has not been established.¹²

Partly Accomplished

DIRECTIVE:

Sec. 4(a), (b), (c).

(a). The Attorney General shall, in coordination with the Secretary of Health and Human Services, develop and publish a report on best practices to address law enforcement officer wellness, including support for officers experiencing substance use disorders, mental health issues, or trauma from their duties. This report shall:

- i. consider the work undertaken already pursuant to the Law Enforcement Mental Health and Wellness Act of 2017; and
- ii. identify existing and needed resources for supporting law enforcement officer wellness.

(b). Upon publication of these best practices, the Attorney General and the heads of all other Federal law enforcement agencies shall assess their own practices and policies for Federal officer wellness and develop and implement changes as appropriate.

(c). The Attorney General shall, in coordination with the Secretary of Health and Human Services and in consultation with multidisciplinary experts and stakeholders, including the National Consortium on Preventing Law Enforcement Suicide and other law enforcement organizations, assess current efforts and available evidence on suicide prevention, and provide evidence-informed recommendations regarding the prevention of death by suicide of law enforcement officers. These recommendations shall also identify methods to encourage submission of data from Federal, State, Tribal, local, and territorial law enforcement agencies to the Federal Bureau of Investigation's Law Enforcement Suicide Data Collection, in a manner that respects the privacy interests of law enforcement officers and is consistent with applicable law.

IMPLEMENTATION:

(a). This report was published in May 2023. This report also addresses law enforcement suicide prevention best practices and resources, which partially satisfies the deliverables in subsection (c).¹³

(b). This deliverable is contingent upon the publication of the report in subsection (a).

Partly Accomplished

DIRECTIVE:

Sec. 5(a), (b), (c), (d), (e), (f), (g).

(a). (a). The Attorney General shall establish the National Law Enforcement Accountability Database as a centralized repository of official records documenting instances of law enforcement officer misconduct as well as commendations and awards. The Attorney General shall ensure that the establishment and administration of the Accountability Database is consistent with the Privacy Act of 1974 and all other applicable laws, and respects appropriate due process protections for law enforcement officers included in the Accountability Database.

(b). The Attorney General, in consultation with the heads of other agencies as appropriate, shall take the following actions with respect to the Accountability Database:

i. include in the Accountability Database all available information that the Attorney General deems necessary, appropriate, and consistent with law and with considerations of victim confidentiality, concerning misconduct by Federal law enforcement officers relevant to carrying out their official duties;

ii. include in the Accountability Database, to the maximum extent permitted by law, official records documenting officer misconduct, including, as appropriate: records of criminal convictions; suspension of a law enforcement officer's enforcement authorities, such as de-certification; terminations; civil judgments, including amounts (if publicly available), related to official duties; and resignations or retirements while under investigation for serious misconduct or sustained complaints or records of disciplinary action based on findings of serious misconduct;

iii. include in the Accountability Database records of officer commendations and awards, as the Attorney General deems appropriate; and

iv. establish appropriate procedures to ensure that the records stored in the Accountability Database are accurate, including by providing officers with sufficient notice and access to their records, as well as a full and fair opportunity to request amendment or removal of any information about themselves from the Accountability Database on the grounds that it is inaccurate or that it is predicated on an official proceeding that lacked appropriate due process protections.

(c). Requirements for the submission of information to the Accountability Database are as follows:

i. the heads of Federal law enforcement agencies shall submit the information determined appropriate for inclusion by the Attorney General under subsection (b) of this section on a quarterly basis, beginning no later than 60 days from the establishment of the Accountability Database; and

ii. the Attorney General shall encourage State, Tribal, local, and territorial law enforcement agencies to contribute to and use the Accountability Database in a manner consistent with subsection (b)(i) of this section and as permitted by law. The Attorney General shall also issue appropriate guidance and technical assistance to further this goal.

(d). In establishing the Accountability Database, the Attorney General shall:

i. make use of Federal records from Department of Justice databases to the maximum extent permitted by law;

ii. make use of information held by other agencies or entities by entering into agreements with the heads of other agencies or entities, as necessary and appropriate;

iii. make use of publicly accessible and reliable sources of information, such as court records, as necessary and appropriate; and

iv. make use of information submitted by State, Tribal, local, and territorial law enforcement agencies, as necessary and appropriate.

(e). The heads of Federal law enforcement agencies shall ensure that the Accountability Database is used, as appropriate and consistent with applicable law, in the hiring, job assignment, and promotion of law enforcement officers within Federal law enforcement agencies, as well as in the screening of State, Tribal, local, and territorial law enforcement officers who participate in programs or activities over which Federal agencies exercise control, such as joint task forces or international training and technical assistance programs, including programs managed by the Department of State and the Department of Justice.

(f). The Attorney General shall establish procedures for the submission of employment-related inquiries by Federal, State, Tribal, local, and territorial law enforcement agencies, and for the provision, upon such a query, of relevant information to the requestor as

appropriate. The Attorney General shall develop guidance and provide technical assistance to encourage State, Tribal, local, and territorial law enforcement agencies to integrate use of the Accountability Database into their hiring decisions, consistent with applicable law.

(g). The Attorney General shall ensure that all access to the Accountability Database established pursuant to subsection (a) of this section is consistent with applicable law, and shall also take the following steps related to public access to the Accountability Database:

i. publish on at least an annual basis, public reports that contain anonymized data from the Accountability Database aggregated by law enforcement agency and by any other factor determined appropriate by the Attorney General, in a manner that does not jeopardize law enforcement officer anonymity due to the size of the agency or other factors; and

ii. assess the feasibility of what records from the Accountability Database may be accessible to the public and the manner in which any such records may be accessible by the public, taking into account the critical need for public trust, transparency, and accountability, as well as the duty to protect the safety, privacy, and due process rights of law enforcement officers who may be identified in the Accountability Database, including obligations under the Privacy Act of 1974 and any other relevant legal obligations; protection of sensitive law enforcement operations; and victim, witness, and source confidentiality.

IMPLEMENTATION:

(a), (b). Per the DOJ fact sheet released on the one-year anniversary of the executive order on policing (May 25, 2023), “National Law Enforcement Accountability Database: Partnered with the International Association of Directors of Law Enforcement (IADLEST) to establish the National Law Enforcement Accountability Database. IADLEST runs the National Decertification Index (NDI), a national registry of law enforcement de-certification and revocation actions relating to officer misconduct that is currently used by all fifty states and the District of Columbia. The Department is working with IADLEST to: (1) expand upon the existing NDI to include the additional categories of information required by the Executive Order; and (2) establish a system for making available Federal law enforcement records based on the NDI model. The Department aims to have the database launched by the end of the year.”¹⁴

(c). The executive order set out a deadline of 60 days from the establishment of the National Law Enforcement Accountability Database in subsection (a) for the accomplishment of this directive.

(d), (e), (f), (g). These deliverables are contingent upon the establishment of the National Law Enforcement Accountability Database.

Partly Accomplished

DIRECTIVE:

Sec. 6(a), (b), (c), (d), (e).

(a). The heads of Federal law enforcement agencies shall submit data monthly to the Federal Bureau of Investigation National Use-of-Force Data Collection (Use-of-Force Database), in accordance with the definitions and categories set forth by the Federal Bureau of Investigation. To the extent not already collected, such data shall include either all deaths of a person due to law enforcement use of force (including deaths in custody incident to an official use of force); all serious bodily injuries of a person due to law enforcement use of force; all discharges of a firearm by law enforcement at or in the direction of a person not otherwise resulting in death or serious bodily injury; or, if applicable, a report for each category that no qualifying incidents occurred and:

i. information about the incident, including date, time, and location; the reason for initial contact; the offenses of which the subject was suspected, if any; the charges filed against the suspect by a prosecutor, if any; and the National Incident-Based Reporting System record or local incident number of the report;

ii. information about the subject of the use of force, including demographic data by subcategory to the maximum extent possible; types of force used against the subject; resulting injuries or death; and reason for the use of force, including any threat or resistance from, or weapon possessed by, the subject;

iii. information about the officers involved, including demographic data by subcategory to the maximum extent possible; years of service in law enforcement and employing agency at the time of the incident; and resulting injuries or death; and

iv. such other information as the Attorney General deems appropriate.

(b). The Attorney General, in consultation with the United States Chief Technology Officer, shall work with State, Tribal, local, and territorial law enforcement agencies to identify the obstacles to their participation in the Use-of-Force Database; to reduce the administrative burden of reporting by using existing data collection efforts and improving those law enforcement agencies' experience; and to provide training and technical assistance to those law enforcement agencies to encourage and facilitate their regular submission of use-of-force information to the Use-of-Force Database.

(c). The Attorney General shall, in a manner that does not reveal the identity of any victim or law enforcement officer, publish quarterly data on use of force and make the data available for research and statistical purposes, in accordance with the standards of data privacy and integrity required by the Office of Management and Budget.

(d). The Attorney General shall also provide training and technical assistance to encourage State, Tribal, local, and territorial law enforcement agencies to submit information to the Law Enforcement Officers Killed and Assaulted Data Collection program of the FBI's Uniform Crime Reporting Program.

(e). The Attorney General shall publish a report on the steps the Department of Justice has taken and plans to take to fully implement the Death in Custody Reporting Act of 2013.

IMPLEMENTATION:

(a). Per the White House fact sheet released on the one-year anniversary of the executive order on policing (May 25, 2023), “Tracking data on use-of-force incidents: Federal law enforcement agencies are collecting and submitting on a monthly basis all data on incidents involving use of deadly force compiled by the FBI’s Use-of-Force Data Collection.”¹⁵ The FBI data collection website also lists categories of information collected about the incident, subject, and officer. Many categories of information overlap with those listed in the directive with some variations. Departments should document and share evidence of compliance in a centralized location to increase transparency.

(b). Per the DOJ fact sheet released on the one-year anniversary of the executive order on policing (May 25, 2023), “National Use of Force Data Collection: Provided training and technical assistance to Federal and STLT law enforcement agencies to increase and improve data to the FBI’s National Use-of-Force data collection program.”¹⁶ There is as of yet no public evidence that the DOJ has identified obstacles to participation and reduced the administrative burden of reporting. This subsection did not require a public facing report to document completion. The DOJ should document and make publicly available evidence that this has been completed to improve transparency.

(c). National Use-of-Force Collection data is currently available on the FBI’s Crime Data Explorer for 2022. No 2023 data has currently been made available. Federal law enforcement agency participation has increased, but it has not yet reached 100 percent.¹⁷

According to the Federal Bureau of Investigation’s website, “Public release of use-of-force data from the National Use-of-Force Data Collection depends on the percentage of agencies contributing data and is governed by federal regulations. Regardless of the level of use-of-force data reported, the FBI will periodically release information on agencies that participate in the data collection. The FBI released initial data when 40% of the total law enforcement officer population was reached. Additional data will be released at 60% and 80% participation levels.”¹⁸

(d). Per the DOJ fact sheet released on the one-year anniversary of the executive order on policing (May 25, 2023), “Law Enforcement Officers Killed and Assaulted: Provided training and technical assistance to STLT law enforcement agencies to increase and improve data to the Law Enforcement Officers Killed and Assaulted data collection program.”¹⁹ This subsection did not require a public facing report to document completion. The DOJ should document and make publicly available evidence that this has been completed to improve transparency.

(e). This report was published in September 2022.²⁰

DIRECTIVE:

Sec. 7(a), (b).

(a). The heads of Federal law enforcement agencies shall ensure that their respective agencies issue policies with requirements that are equivalent to, or exceed, the requirements of the policy issued by the Department of Justice on September 13, 2021, which generally prohibits the use of chokeholds and carotid restraints except where the use of deadly force is authorized by law. The head of every Federal law enforcement agency shall incorporate training consistent with this section.

(b). The head of every Federal LEA shall incorporate training consistent with this section.

IMPLEMENTATION:

(a). Per the White House fact sheet released on the one-year anniversary of the executive order on policing (May 25, 2023), “Chokeholds and No-Knock Entry Policy: Federal executive law enforcement agencies, including DOJ, DHS, and DOI, which encompass more than 90% of federal law enforcement officers, banned chokeholds and carotid restraints, unless deadly force is authorized, and limited the use of “no-knock” entries.”²¹ Some federal law enforcement agencies have publicly issued updated guidance on the use of chokeholds and carotid restraints. For example, in October 2022, the Department of the Interior updated the department’s use of force policy, which includes updated policies on the use of chokeholds. The policy states that “Chokeholds and carotid restraints are prohibited unless the legal standard for the use of deadly force is satisfied.”²² In February 2023, a DHS press release announced that DHS would be adopting the updated DOJ use-of-force policy per the executive order.²³ Departments should document and share evidence of compliance in a centralized location to increase transparency.

(b). In October 2022, the Department of the Interior announced new law enforcement policies in alignment with the DOJ use-of-force policies, including training.²⁴ In February 2023, the Department of Homeland Security published updated use-of-force policy updates, which include a requirement to provide training.²⁵ Departments should document and share evidence of compliance in a centralized location to increase transparency.

Partly Accomplished

DIRECTIVE:

Sec. 8(a), (b).

(a). The heads of Federal law enforcement agencies shall ensure that their respective agencies issue policies with requirements that reflect principles of valuing and preserving human life and that are equivalent to, or exceed, the requirements of the policy issued by the Department of Justice on May 20, 2022, which establishes standards and obligations for the use of force.

(b). The heads of Federal law enforcement agencies shall incorporate annual, evidence-informed training for their respective law enforcement officers that is consistent with the Department of Justice's use-of-force policy; implement early warning systems or other risk management tools that enable supervisors to identify problematic conduct and appropriate interventions to help prevent avoidable uses of force; and ensure the use of effective mechanisms for holding their law enforcement officers accountable for violating use of force policies.

IMPLEMENTATION:

(a). Per the White House fact sheet released on the one-year anniversary of the executive order on policing (May 25, 2023), "Use of Force Policies: Federal law enforcement agencies, including DOJ, DHS, and DOI, which encompass more than 90% of all federal law enforcement officers, have adopted policies that emphasize the importance of valuing and preserving human life."²⁶ Some federal law enforcement agencies have publicly issued updated guidance on use-of-force. For example, in October 2022, the Department of the Interior published updated use of force guidelines for department personnel. In May 2022, the attorney general released an updated use of force policy crafted in consultation with, and has been approved by, the heads of the Bureau of Alcohol, Tobacco, Firearms, and Explosives; Drug Enforcement Administration; Federal Bureau of Investigation; Federal Bureau of Prisons; Office of the Inspector General; and U.S. Marshalls Service.²⁷ The new department-wide policy assigned July 2022 as its effective date and tasked agencies with designating a senior official responsible for implementation. Departments should document and share evidence of compliance in a centralized location to increase transparency.

(b). Per the DOJ fact sheet released on the one-year anniversary of the executive order on policing (May 25, 2023), "Use of Force Policy: In May 2022, the Department updated its use of force policy to: Require training no less than annually on the Department's policy."²⁸ There is as of yet no public evidence that departments have implemented early warning systems or other risk management tools to identify problematic conduct and appropriate interventions and ensure the use of effective mechanisms for holding officers accountable for violating use of force policies. Departments should document and share evidence of compliance in a centralized location to increase transparency.

Partly Accomplished

DIRECTIVE:

Sec. 9 (a), (b), (d), (e).

(a), (b). The Director of the Office of Personnel Management and the Attorney General shall develop an evidence-informed training module for law enforcement officers on implicit bias and avoiding improper profiling based on the actual or perceived race, ethnicity, national origin, limited English proficiency, religion, sex (including sexual orientation and gender identity), or disability of individuals. The heads of Federal law enforcement agencies shall, to the extent consistent with applicable law, ensure that their law enforcement officers complete such training annually.

(c). The heads of Federal law enforcement agencies shall, to the extent consistent with applicable law, establish that effective procedures are in place for receiving, investigating, and responding meaningfully to complaints alleging improper profiling or bias by Federal law enforcement officers.

(d). Federal agencies that exercise control over joint task forces or international training and technical assistance programs in which State, Tribal, local, and territorial officers participate shall include training on implicit bias and profiling as part of any training program required by the Federal agency for officers participating in the task force or program.

(e). The Attorney General, in collaboration with the Secretary of Homeland Security and the heads of other agencies as appropriate, shall assess the implementation and effects of the Department of Justice's December 2014 Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity; consider whether this guidance should be updated; and report to the President as to any changes to this guidance that have been made.

IMPLEMENTATION:

(a), (b). Publicly available evidence of implementation was not found.

(c). The Department of Justice's Office of the Inspector General website offers a way to report police misconduct, as do websites for some other offices of inspectors general. There is a lack of insight on what processes and procedures are in place for investigating and meaningfully responding to allegations of wrongdoing.²⁹ Departments should document and share evidence of compliance in a centralized location to increase transparency.

(d). Publicly available evidence of implementation was not found.

(e). Updated guidance released in May 2023.³⁰

Partly Accomplished

DIRECTIVE:

Sec. 10(a), (b), (c).

(a). The heads of Federal law enforcement agencies shall, as soon as practicable, ensure that their respective agencies issue policies with requirements that are equivalent to, or exceed, the requirements of the policy issued by the Department of Justice on September 13, 2021, which limits the use of unannounced entries, often referred to as “no-knock entries,” and provides guidance to ensure the safe execution of announced entries.

(b). The heads of Federal law enforcement agencies shall maintain records of no-knock entries.

(c). The heads of Federal law enforcement agencies shall issue annual reports to the President — and post the reports publicly — setting forth the number of no-knock entries that occurred pursuant to judicial authorization; the number of no-knock entries that occurred pursuant to exigent circumstances; and disaggregated data by circumstances for no-knock entries in which a law enforcement officer or other person was injured in the course of a no-knock entry.

IMPLEMENTATION:

(a). Per the White House fact sheet released on the one-year anniversary of the executive order on policing (May 25, 2023), “Chokeholds and No-Knock Entry Policy: Federal executive law enforcement agencies, including DOJ, DHS, and DOI, which encompass more than 90% of federal law enforcement officers, banned chokeholds and carotid restraints, unless deadly force is authorized, and limited the use of “no-knock” entries.”³¹ Some federal law enforcement agencies have publicly issued updated policies on the use of no-knock entries. For example, the Department of the Interior released a July 2022 bulletin identifying policies that comply with the Department of Justice’s memorandum. The bulletin further states that the agency’s “Bureau/Office Directors for Law Enforcement shall also report quarterly to the Director of the Office of Law Enforcement and Security regarding the number of ‘no-knock entries’ their Bureau/Office executed during the prior quarter.”³² In February 2023, a press release announced that DHS would be adopting the updated DOJ use-of-force policy, including limitations on the use of no-knock entries, per the executive order.³³ Departments should document and share evidence of compliance in a centralized location to increase transparency.

(b). Publicly available evidence of implementation was not found.

(c). The report was released in May 2023.³⁴

Partly Accomplished

DIRECTIVE:

Sec. 11(a), (b), (c), (d), (e)

(a). The Secretary of Health and Human Services shall conduct a nationwide study of the community effects of use of force by law enforcement officers (whether lawful or unlawful) on physical, mental, and public health, including any disparate impacts on communities of color, and shall publish a public report including these findings.

(b). The Attorney General, the Secretary of Health and Human Services, and the Director of Office of Management and Budget shall provide a report to the President outlining what resources are available and what additional resources may be needed to provide widely and freely accessible mental health and social support services for individuals and communities affected by incidents of use of force by law enforcement officers.

(c). The Attorney General, in collaboration with the heads of other agencies as appropriate, shall issue guidance for Federal, State, Tribal, local, and territorial law enforcement agencies on best practices for planning and conducting law enforcement-community dialogues to improve relations and communication between law enforcement and communities, particularly following incidents involving use of deadly force.

(d). The Attorney General, in collaboration with the heads of other agencies as appropriate, shall issue guidance for Federal, State, Tribal, local, and territorial law enforcement agencies, or other entities responsible for providing official notification of deaths in custody, on best practices to promote the timely and appropriate notification of, and support to, family members or emergency contacts of persons who die in correctional or law enforcement agency custody, including deaths resulting from the use of force.

(e). After the issuance of the guidance, the heads of Federal law enforcement agencies shall assess and revise their policies and procedures as necessary to accord with that guidance.

IMPLEMENTATION:

(a). The report was released in May 2023.³⁵

(b). The executive order set out a deadline of 60 days from the publication of the report in subsection (a) for the accomplishment of this directive.

(c). Publicly available evidence of implementation was not found.

(d). Updated guidance was released in May 2023.³⁶

(e). The executive order states that efforts to complete subsection (e) will begin after the issuance of the guidance in subsection (d).

Partly Accomplished

DIRECTIVE:

Sec. 12(a), (b), (c).

(a). The Secretary of the Treasury, the Secretary of Defense, the Attorney General, the Secretary of Homeland Security, and the Administrator of General Services shall each review all programs and authorities concerning property transfers to State, Tribal, local, and territorial law enforcement agencies, or property purchases by State, Tribal, local, and territorial law enforcement agencies either with Federal funds or from Federal agencies or contractors, including existing transfer contracts or grants. The Secretary of the Treasury, the Secretary of Defense, the Attorney General, the Secretary of Homeland Security, and the Administrator of General Services shall determine whether, pursuant to this order, such transfers or purchases can, consistent with applicable law, be prohibited beyond existing restrictions.

(b). Federal agencies shall review and take all necessary action, as appropriate and consistent with applicable law, to comply with and implement the recommendations established by the former Law Enforcement Equipment Working Group pursuant to Executive Order 13688 of January 16, 2015 (Federal Support for Local Law Enforcement Equipment Acquisition), as contained in the Law Enforcement Equipment Working Group’s May 2015 Report (Recommendations Pursuant to Executive Order 13688, Federal Support for Local Law Enforcement Equipment Acquisition), and October 2016 Implementation Update (Recommendations Pursuant to Executive Order 13688, Federal Support for Local Law Enforcement Equipment Acquisition). To the extent that there is any inconsistency between this order and either the Law Enforcement Equipment Working Group’s May 2015 Report or October 2016 Implementation Update, this order shall supersede those documents.

(c). Prior to transferring any property included in the “controlled equipment list” within the October 2016 Implementation Update, agencies shall take all necessary action, as appropriate and consistent with applicable law, to ensure that the recipient State, Tribal, local, or territorial law enforcement agencies:

i. submits to that agency a description of how the recipient expects to use the property and demonstrates that the property will be tracked in an asset management system;

ii. certifies that if the recipient determines that the property is surplus to its needs, the recipient will return the property;

iii. certifies that the recipient notified the local community of its request for the property and translated the notification into appropriate languages to inform individuals with limited English proficiency, and certifies that the recipient notified the city council or other local governing body of its intent to request the property and that the request comports with all applicable approval requirements of the local governing body; and

iv. agrees to return the property if the Department of Justice determines or a Federal, State, Tribal, local, or territorial court enters a final judgment finding that the law enforcement agency has engaged in a pattern or practice of civil rights violations.

IMPLEMENTATION:

(a). The White House fact sheet released on the one-year anniversary of the executive order on policing (May 25, 2023), “Restrictions on Access to Certain Military Equipment: DHS, DOD, DOJ, GSA, and Treasury have taken steps to ensure that certain militarized equipment — including certain firearms and ammunition, bayonets, grenades and grenade launchers, explosives, and certain vehicles and aircraft—are not sold or transferred to STLT law enforcement agencies. These restrictions will strengthen public trust while ensuring state and local law enforcement agencies can access and use needed equipment for appropriate purposes, such as active shooter scenarios.”³⁷ Departments should document and share evidence of compliance in a centralized location to increase transparency.

(b). Aspects of the work summarized in the White House fact sheet hint at portions of this section, but publicly released details around the full implementation of the recommendations pursuant to Executive Order 13688 were not found.

(c). Publicly available evidence of implementation was not found.

Partly Accomplished

DIRECTIVE:

Sec. 13(a), (b), (c), (d), (e), (f).

(a). The heads of Federal law enforcement agencies shall take the following actions with respect to body-worn camera policies:

(i). The heads of Federal law enforcement agencies shall ensure that their respective agencies issue policies with requirements that are equivalent to, or exceed, the requirements of the policy issued by the Department of Justice on June 7, 2021, requiring the heads of certain Department of Justice law enforcement components to develop policies regarding the use of body-worn cameras recording equipment. The heads of Federal law enforcement agencies shall further identify the resources necessary to fully implement such policies.

(ii). For Federal law enforcement agencies that regularly conduct patrols or routinely engage with the public in response to

emergency calls, the policies issued shall be designed to ensure that cameras are worn and activated in all appropriate circumstances, including during arrests and searches.

(iii). The heads of Federal law enforcement agencies shall ensure that all body-worn camera policies shall be publicly posted and shall be designed to promote transparency and protect the privacy and civil rights of members of the public.

(b). Federal law enforcement agencies shall include within the policies protocols for expedited public release of body-worn camera video footage following incidents involving serious bodily injury or deaths in custody, which shall be consistent with applicable law, including the Privacy Act of 1974, and shall take into account the need to promote transparency and accountability, the duty to protect the privacy rights of persons depicted



in the footage, and any need to protect ongoing law enforcement operations.

(c). The Attorney General, in coordination with the Secretary of Health and Human Services and the Director of the Office of Science and Technology Policy, shall conduct a study that assesses the advantages and disadvantages of officer review of body-worn camera footage prior to the completion of initial reports or interviews concerning an incident involving use of force, including an assessment of current scientific research regarding the effects of such review. The Attorney General, in coordination with the Secretary of Health and Human Services, shall publish a report detailing the findings of that study, and shall identify best practices regarding law enforcement officer review of body-worn camera footage.

(d). The Attorney General shall request the National Academy of Sciences, through its National Research Council, to enter into a contract to:

i. conduct a study of facial recognition technology, other technologies using biometric information, and predictive algorithms, with a particular focus on the use of such technologies and algorithms by law enforcement, that includes an assessment of how such technologies and algorithms are used, and any privacy, civil rights, civil liberties, accuracy, or disparate impact concerns raised by those technologies and algorithms or their manner of use; and

ii. publish a report detailing the findings of that study, as well as any recommendations for the use of or for restrictions on facial recognition technologies, other technologies using biometric information, and predictive algorithms by law enforcement.

(e). The Attorney General, the Secretary of Homeland Security, and the Director of Office of Science and Technology Policy shall jointly lead an interagency process regarding the use by law enforcement agencies of facial recognition technology, other technologies using biometric information, and predictive algorithms, as well as data storage and access regarding such technologies, and shall: ensure that the interagency process addresses safeguarding privacy, civil rights, and civil liberties, and ensure that any use of such technologies is regularly assessed for accuracy in the specific deployment context; does not have a disparate impact on the basis of race, ethnicity, national origin, religion, sex (including sexual orientation and gender identity), or disability. They shall, in coordination with other agencies and government entities, publish a report that:

i. identifies best practices;

ii. describes any changes made to relevant policies of Federal law enforcement agencies; and

iii. recommends guidelines for Federal, State, Tribal, local, and territorial law enforcement agencies, as well as technology vendors whose goods or services are procured by the Federal Government, on the use of such technologies, including electronic discovery obligations regarding the accuracy and disparate impact of technologies employed in specific cases.

(f). The heads of Federal law enforcement agencies shall review the conclusions of the interagency process and, where appropriate, update each of their respective agency's policies regarding the use of facial recognition technology, other technologies using biometric information, and predictive algorithms, as well as data storage and access regarding such technologies.

IMPLEMENTATION:

(a). Per the White House fact sheet released on the one-year anniversary of the executive order on policing (May 25, 2023), “Body-worn Cameras (BWC): Federal law enforcement agencies, including DOJ, DHS, and DOI, which encompass more than 90% of all federal law enforcement officers, issued policies requiring officers to wear and activate the BWC recording equipment for purposes of recording their actions during a pre-planned attempt to serve an arrest warrant or other pre-planned arrest or the execution of a search or seizure warrant or order, and included a presumption that BWC recordings depicting conduct resulting in serious bodily injury or death of another will be released as soon as practical.”³⁸ Some federal law enforcement agencies have publicly issued updated or new policies on body-worn cameras. For example, in October 2022, the Department of the Interior updated the department’s body-worn camera policy.³⁹ In May 2023, a press release announced DHS would be adopting its first department-wide policy on body-worn cameras.⁴⁰ Other law enforcement agencies that have published body-worn-camera policies include the Department of Justice; Federal Bureau of Investigation; Bureau of Alcohol Tobacco, Firearms and Explosives; and Department of the Interior. The Drug Enforcement Agency and U.S. Marshals Service have issued an interim policy, and Immigration and Customs Enforcement has published a “privacy impact assessment” for body-worn cameras. Customs and Border Patrol had adopted a pilot body-worn camera program in November 2021 before the executive order’s publication.⁴¹

There is insufficient evidence that all law enforcement agencies have effective procedures in place to investigate and respond meaningfully to complaints of misconduct or that all agencies have complied with each subsection in section (a).

(b). The body-worn camera policies submitted by the above agencies generally incorporate provisions for expedited public release of body-worn camera footage. However, it is not evident whether formal protocols have been established and whether the policies have been fully implemented.⁴²

(c). Publicly available evidence of implementation was not found.

(d). The National Academy of Sciences is in the process of conducting this study.⁴³

(e). Publicly available evidence of implementation was not found.

(f). This deliverable is contingent upon the conclusions of the interagency process in subsection (e).

Partly Accomplished

DIRECTIVE:

Sec. 15(a), (c), (d), (e), (f), (h).

(a). There is established a Federal Interagency Alternatives and Reentry Committee.

(c). The Federal Interagency Alternatives and Reentry Committee shall consult and coordinate with the Department of Justice Reentry Coordination Council to coordinate on Federal programs, policies, and activities relating to the reentry of individuals returning from incarceration to the community. The Committee may consult with other agencies; Government officials; outside experts; interested persons; service providers; nonprofit organizations; law enforcement organizations; and State, Tribal, local, and territorial governments, as appropriate.

(d). It shall develop and coordinate implementation of an evidence-informed strategic plan across the Federal Government to advance the following goals, with particular attention to reducing racial, ethnic, and other disparities in the Nation's criminal justice system:

i. safely reducing unnecessary criminal justice interactions, including by advancing alternatives to arrest and incarceration; supporting effective alternative responses to substance use disorders, mental health needs, the needs of veterans and people with disabilities, vulnerable youth, people who are victims of domestic violence, sexual assault, or trafficking, and people experiencing homelessness or living in poverty; expanding the availability of diversion and restorative justice programs consistent with public safety; and recommending effective means of addressing minor traffic and other public order infractions to avoid unnecessarily taxing law enforcement resources;

ii. supporting rehabilitation during incarceration, such as through educational opportunities, job training, medical and mental health care, trauma-informed care, substance use disorder treatment and recovery support, and continuity of contact with children and other family members; and

iii. facilitating reentry into society of people with criminal records, including by providing support to promote success after incarceration; sealing or expunging criminal records, as appropriate; and removing barriers to securing government-issued identification, housing, employment, occupational licenses, education, health insurance and health care, public benefits, access to transportation, and the right to vote.

(e). The strategic plan shall make recommendations for State, Tribal, local, and territorial criminal justice systems. The Committee's strategic plan shall make recommendations for Federal, State, Tribal, local, and territorial criminal justice systems. All agency participants shall continue to participate in, and provide regular updates to, the Committee regarding their progress in achieving the goals outlined in the plan.

(f). The Attorney General shall submit a report to the President that provides a strategic plan to advance the goals outlined in the plan as they relate to the Federal criminal justice system.

(h). The Attorney General shall coordinate with the Department of Justice Reentry Coordination Council and the Department of Justice Civil Rights Division to publish a report on the following data, disaggregated by judicial district:

i. the resources currently available to individuals on probation or supervised release, and the additional resources necessary to ensure that the employment, housing, educational, and reentry needs of offenders are fulfilled; and

ii. The number of probationers and supervised releasees revoked, modified, or reinstated for Grade A, B, and C violations, disaggregated by demographic data and the mean and median sentence length for each demographic category.

IMPLEMENTATION:

(a). A DOJ press release from April 28, 2023 states: “The Executive Order established the Federal Interagency Alternatives and Reentry Committee (ARC or Committee), chaired by the Assistant to the President for Domestic Policy and comprised of the Attorney General and the secretaries of more than a dozen executive agencies.”⁴⁴

(c). A report outlining the Reentry Coordination Council stakeholder engagement and recommendations to reduce barriers to reentry was released in April 2022.⁴⁵

(d). Publicly available evidence of implementation was not found.

(f). The strategic plan was released on April 28, 2023. This strategic plan makes recommendations for state, local, tribal, and territorial criminal justice systems, which partially satisfies the deliverables in subsection (e).⁴⁶

(h). The report was released in May 2023.⁴⁷

Partly Accomplished

DIRECTIVE:

Sec. 16(a), (b).

(a). For the duration of the public health emergency declared with respect to COVID-19, the Attorney General shall continue to implement the core public health measures, as appropriate, of masking, distancing, testing, and vaccination in Federal prisons. In addition, the Attorney General shall undertake, as appropriate, the following actions:

i. updating Bureau of Prisons and United States Marshals Service procedures and protocols, in consultation with the Secretary of Health and Human Services, as appropriate, to facilitate COVID-19 testing of Bureau of Prison staff and individuals in federal custody who are asymptomatic or symptomatic and do not have known, suspected, or reported exposure to SARS-CoV-2, the virus that causes COVID-19;

ii. updating Bureau of Prisons and United States Marshals Service procedures and protocols, in consultation with the Secretary of Health and Human Services, to identify alternatives consistent with public health recommendations to the use of facility-wide lockdowns to prevent the transmission of SARS-CoV-2, or to the use of restrictive housing for detainees and prisoners who have tested positive for SARS-CoV-2 or have known, suspected, or reported exposure;

iii. identifying the number of individuals who meet the eligibility requirements under the CARES Act, the First Step Act for release as part of the Department of Justice’s efforts to mitigate the impact and spread of COVID-19; and



iv. expanding the sharing and publication of Bureau of Prisons and U.S. Marshals Service data, in consultation with the Secretary of Health and Human Services, regarding vaccination, testing, infections, and fatalities due to COVID-19 among staff, prisoners, and detainees, in a manner that ensures the thoroughness and accuracy of the data; protects privacy; and disaggregates the data by race, ethnicity, age, sex, disability, and facility, after consulting with the White House COVID-19 Response Team, Health and Human Services, and the Equitable Data Working Group established in the Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.

(b). The Attorney General shall take the following actions relating to other conditions of confinement in Federal detention facilities:

i. submit a report to the President detailing steps the Department of Justice has taken, consistent with applicable law, to ensure that restrictive housing in Federal detention facilities is used rarely, applied fairly, and subject to reasonable constraints; to ensure that individuals in Department of Justice custody are housed in the least restrictive setting necessary for their safety and the safety of staff, other prisoners and

detainees, and the public; to house prisoners as close to their families as practicable; and to ensure the Department of Justice's full implementation, at a minimum, of the Prison Rape Elimination Act of 2003 and the recommendations of the Department of Justice's January 2016 Report and Recommendations Concerning the Use of Restrictive Housing; and

ii. complete a comprehensive review and transmit a report to the President identifying any planned steps to address conditions of confinement, including steps designed to improve the accessibility and quality of medical care (including behavioral and mental health care), the specific needs of women (including breast and cervical cancer screening, gynecological and reproductive health care, and prenatal and postpartum care), the specific needs of juveniles (including age-appropriate programming), recovery support services (including substance use disorder treatment and trauma-informed care), and the environmental conditions for all individuals in Bureau of Prisons and United States Marshals Service custody.

IMPLEMENTATION:

(a). The Bureau of Prisons’ website indicates that some COVID protocols — such as distancing, masking, and isolation — are still implemented. The strictness of COVID protocols vary depending on a facility’s case rate. Staff testing is only required daily at facilities with high rates of COVID-19. Individuals who are detained are tested when they are symptomatic, asymptomatic but exposed, during movements, and when surveillance is needed. It is not evident how robustly they are adhered to. Also not evident is the extent to which other parts of the directive are being carried out.⁴⁸

The Department of Justice published a proposed rule that would affirm the director of the Bureau of Prisons’ authority to allow detained individuals placed in home confinement under the CARES Act to remain there upon expiration of the covered emergency period.⁴⁹

(b)(i). The executive order set out a deadline of January 20, 2023 for the comprehensive review. The Department of Justice published a report pursuant to Section 16(b)(i) on February 1, 2023.⁵⁰

(b)(ii). The report was released in May 2023.⁵¹

Partly Accomplished

DIRECTIVE:

Sec. 18(a), (b), (c)

(a). The Attorney General, in consultation with the United States Chief Data Scientist and the United States Chief Statistician, shall review the status of State, Tribal, local, and territorial law enforcement agencies transitioning from the Summary Reporting System to the National Incident-Based Reporting System in the Federal Bureau of Investigation's Uniform Crime Reporting Program, and shall submit a report to the President summarizing the status of that transition for State, Tribal, local, and territorial law enforcement agencies and including recommendations to maximize participation in the National Incident-Based Reporting System.

(b). The Attorney General, through the Director of the Bureau of Justice Statistics, and the Director of Office of Management and Budget, through the United States Chief Statistician, shall jointly submit a report to the President detailing what, if any, steps the agencies will take:

- i.** to improve their current data collections, such as the National Crime Victimization Survey and the Police-Public Contact Survey Supplement, including how to ensure that such data collections are undertaken and published annually, and that they include victimization surveys that measure law enforcement use of force; serious bodily injury



or death that occurs in law enforcement encounters; public trust in law enforcement; and actual or perceived bias by demographic subgroups defined by race, ethnicity, and sex (including sexual orientation and gender identity); and

ii. to improve the Law Enforcement Management and Administrative Statistics Survey, with a focus on ensuring that such data collections are undertaken and published regularly and measure law enforcement workforce data, use of force, public trust in law enforcement, and actual or perceived bias.

(c). The Equitable Data Working Group shall work with the National Science and Technology Council to create a Working Group on Criminal Justice Statistics, which shall consult with representatives of the Federal Defender Services; civil rights, civil liberties, data privacy, and law enforcement organizations; and criminal justice data scientists. The working group shall:

i. issue a report to the President that assesses current data collection, use, and data transparency practices with respect to law enforcement activities, including calls for service, searches, stops, frisks, seizures, arrests, complaints, law enforcement demographics, and civil asset forfeiture; and

ii. assess practices and policies governing the acquisition, use, and oversight of advanced surveillance and forensic technologies, including commercial cyber intrusion tools, by Federal, State, Tribal, local, and territorial law enforcement, and shall include in the report to the President recommendations based on this assessment that promote equitable, transparent, accountable, constitutional, and effective law enforcement practices.

IMPLEMENTATION:

(a). An October 2022 Department of Justice blog post includes information on transitions to National Incident-Based Reporting System: “All 50 states are now certified for National Incident-Based Reporting System, and two-thirds of the country is covered by National Incident-Based Reporting System reporting agencies. Some states that reported no National Incident-Based Reporting System data just a few years ago, like Nevada and North Carolina, now have a 100% reporting coverage rate. National Incident-Based Reporting System participants include 62 of the 85 cities with populations above 250,000 persons.” On January 18, 2023, the Department of Justice issued its report pursuant to Section 18(a).⁵²

(b). The report was released in May 2023.⁵³

(c)(i). The report was released in May 2023.⁵⁴

(c)(ii). Publicly available evidence of implementation was not found.

Partly Accomplished

DIRECTIVE:

Sec. 19(a), (b), (c)

(a). The Attorney General shall develop and implement methods to promote State, Tribal, local, and territorial law enforcement agencies seeking accreditation by an authorized, independent credentialing body, including by determining what discretionary grants shall require that the law enforcement agencies be accredited or be in the process of obtaining accreditation.

(b), (c). The Attorney General shall develop and publish standards for determining whether an entity is an authorized, independent credentialing body, including that the entity requires policies and encourages participation in comprehensive collection and use of police misconduct and use-of-force-data. In developing such standards, the Attorney General shall also consider the recommendations of the Final Report of the President's Task Force on 21st Century Policing issued in May 2015. Pending the development of such standards, the Attorney General shall maintain the current requirements related to accreditation. The Attorney General, in formulating standards for accrediting bodies, shall consult with professional accreditation organizations, law enforcement organizations, civil rights and community-based organizations, civilian oversight and accountability groups, and other appropriate stakeholders. The Attorney General's standards shall ensure that, in order to qualify as an authorized, independent credentialing body, the accrediting entity must conduct independent assessments of a law enforcement agency's compliance with applicable standards as part of the accreditation process and not rely on the law enforcement agency's self-certification alone.

IMPLEMENTATION:

(a). Publicly available evidence of implementation was not found.

(b), (c). The report was released in May 2023.⁵⁵

Partly Accomplished

DIRECTIVE:

Sec. 20(a), (b).

(a). The Attorney General, the Secretary of Health and Human Services, and the Secretary of Homeland Security shall promptly review and exercise their authority, as appropriate and consistent with applicable law, to award Federal discretionary grants in a manner that supports and promotes the adoption of policies of this order by State, Tribal, local, and territorial governments and law enforcement agencies. The Attorney General, the Secretary of Health and Human Services, and the Secretary of Homeland Security shall also use other incentives outside of grantmaking, such as training and technical assistance, as appropriate and consistent with applicable law, to support State, Tribal, local, and territorial governments and law enforcement agencies in adopting the policies in this order.

(b). On September 15, 2021, the Associate Attorney General directed a review of the Department of Justice's implementation and administrative enforcement of Title VI of the Civil Rights Act of 1964 and of the nondiscrimination provisions

of the Omnibus Crime Control and Safe Streets Act of 1968 in connection with Federal financial assistance the Department of Justice provides, to ensure that the Department of Justice is providing sufficient oversight and accountability regarding the activities of its federally funded recipients. The head of every other Federal agency that provides grants to State, local, and territorial law enforcement agencies shall commence a similar review of its law enforcement-related grantmaking operations and the activities of its grant recipients. The head of each Federal agency that provides grants to State, local, and territorial law enforcement agencies shall submit to the Assistant Attorney General for the Civil Rights Division of the Department of Justice, for review under Executive Order 12250 of November 2, 1980 (Leadership and Coordination of Nondiscrimination Laws), a report of its review conducted, including its conclusions and recommendations. The head of each such agency shall make the conclusions of its review publicly available, as appropriate.

IMPLEMENTATION:

(a). Per the White House fact sheet released on the one-year anniversary of the executive order on policing (May 25, 2023), "Grantmaking: Key federal agencies are awarding discretionary grants in a manner that supports and promotes the adoption of the Executive Order's policies by STLT law enforcement agencies. For example, starting with the Fiscal Year (FY) 2023 grant cycle, in relevant solicitations, DOJ included language outlining priority consideration for applicants that have policies or practices in line with substantive provisions of the Executive Order for which the Department has issued policies, guidance, or best practices. The Department will expand the list of priority considerations in solicitations for FY 2024 and going forward, to include best practices and guidance the Department has developed and published in recent months. HHS included similar language for its Mental Health Awareness Training Grant program and its Behavior Health Partnership for Early Diversion of Adults and Youth program. DHS will include incentivizing language in its discretionary grants to STLT law enforcement agencies beginning in FY 2024, where appropriate."⁵⁶

(b). Publicly available evidence of implementation was not found.

ASSESSMENT II.

Implementation of the Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government

Issued on January 20, 2021

Introduction

Among the first orders President Biden signed upon taking office in January 2021, the Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government recognizes America's reckoning with systemic racial inequity. A follow-up executive order — the Executive Order on Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government — was issued on February 16, 2023. This order clarifies and sharpens the directives of the January 2021 order, urges agencies to address emerging civil rights threats such as algorithmic discrimination, and empowers officials within agencies to move forward the aims of that order.

Both of these orders are groundbreaking. They require each agency to assess whether underserved communities and their members face systemic barriers in accessing agency programs, policies, benefits, and opportunities and to provide the White House with a report identifying new policies, programs, and regulations that could help address them.

A central directive is a requirement for agencies to conduct equity assessments of their internal policies and practices, which under the February 2023 order must now be conducted annually. Each federal agency is tasked with identifying policies that may result in discrimination or inequities in federal services and programming and to overhaul or eliminate those deemed problematic. Agencies are further required to provide the White House and the public with reports containing recommendations.

This report does not assess the Biden administration's implementation of these agency equity action plans. However, they are referenced as evidence of agencies' intentions to carry out new programming or remediate past harms.

We assessed the implementation status of six major directives contained within the January 2021 order and, as of the time of this evaluation, two were fully implemented. It is important for the administration to complete this work and fully implement both executive orders.

There is still time to accomplish this, but urgency is required.

Assessment Summary

President Biden signed the Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government on his first day in office. The majority of directives contained within that order remain at various stages of compliance. The issuance of a follow-up executive order on February 16, 2023, the Executive Order on Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, clarified and sharpened these directives and empowered officials within agencies to move forward the aims of the first order.

The first executive order tasks each federal agency with identifying policies that may result in discrimination or inequities in federal services and programming and to overhaul or eliminate those deemed problematic. The order further requires agencies to provide the White House with reports containing recommendations.

The Office of Management and Budget, which operates within the Executive Office of the President, laid foundational groundwork in producing a report with advice for how agencies should conduct their internal assessments. More than 90 agencies, including every Cabinet-level agency, have submitted plans. Many have already begun implementation. The follow-up February 2023 executive order makes this requirement annual beginning in September of 2023 and requires plans to include “policy, budgetary, programmatic, service-delivery, procurement, data-collection processes, grantmaking, public engagement, research and evaluation, and regulatory functions.”

However, not all agencies have complied with the January 2021 order’s requirement to submit plans to study and address inequities in government contracting and procurement. The federal government spent upwards of \$637 billion on government contracts in Fiscal Year 2021. Federal contracts offer businesses who win them enormous opportunities to grow their businesses.⁵⁷ Although many agencies that submitted equity plans to the White House addressed contracting and procurement within those pages, others did not. The administration’s follow-up executive order specifies that procurement be considered in each Equity Action Plan, requires 15 percent of all federal procurement dollars to be spent on disadvantaged businesses, and directs the Small Business Administration to work directly with agencies to meet this target.

In order to lead this work, the White House’s follow-up executive order requires 23 federal agencies to designate “Agency Equity Teams” to coordinate “policy, budgetary,

programmatic, service-delivery, procurement, data-collection processes, grantmaking, public engagement, research and evaluation, and regulatory functions to enable the agency’s mission and service delivery to yield equitable outcomes for all Americans, including underserved communities.” Additionally, it creates the White House Steering Committee on Equity to coordinate government-wide efforts to advance equity from the Executive Office of the President.

As for the January 2021 executive order’s other directives, the White House delivered on its promise to dismantle President Trump’s 1776 Commission and remove its report from the White House’s website. The White House also named an Interagency Working Group on Equitable Data and revoked an executive order prohibiting anti-bias training. However, follow up has been mixed. For instance, while the Interagency Working Group was established in 2021 and issued its first report with recommendations in April 2022, it is still in the early stages of implementing those recommendations alongside agencies. While the February 2023 order shows increasing recognition of this need, there is still work to be done in identifying and filling data gaps and supporting the creation of the needed mechanisms.

Assessment of Specific Directives

The following chart includes a granular analysis of the status of the directives that were assessed and where each of these directives stand based on publicly available information.⁵⁸

Accomplished

DIRECTIVE:

Sec. 4.

The Director of the Office of Management and Budget shall, in partnership with the heads of agencies, study methods for assessing whether agency policies and actions create or exacerbate barriers to full and equal participation by all eligible individuals. The study should aim to identify the best methods, consistent with applicable law, to assist agencies in assessing equity with respect to race, ethnicity, religion, income, geography, gender identity, sexual orientation, and disability. The Office of Management and Budget shall deliver a report to the President describing the best practices identified by the study and, as appropriate, recommending approaches to expand use of those methods across the Federal Government.

IMPLEMENTATION:

The Office of Management and Budget published its final report in July 2021.⁵⁹

The February 2023 updated executive order directs the Office of Management and Budget to support agencies' Equity Action Plans and invest in underserved communities each year through the formulation of the president's budget.

Accomplished

DIRECTIVE:

Sec. 5.

Each agency shall assess whether underserved communities and their members face systemic barriers in accessing agency programs, policies, benefits, and opportunities. Each agency must provide the White House with a report assessing these barriers and identify new policies, programs, and regulations that could help address them (agency equity plans).

IMPLEMENTATION:

Approximately 90 agencies have submitted equity assessments and action plans to the White House. This includes all Cabinet-level agencies and slightly more than 50 independent agencies.

The February 2023 order makes this an annual requirement.



Partly Accomplished

DIRECTIVE:

Sec. 6.

The director of the Office of Management and Budget shall conduct a study to identify opportunities to promote equity in the budget that the President submits to the Congress. The study should identify strategies for allocating Federal resources in a manner that increases investment in underserved communities, as well as individuals from those communities. A report shall be submitted to the President by the Office of Management and Budget.

IMPLEMENTATION:

A 2021 report by the Office of Management and Budget identifies ways in which core financial management practices offer opportunities to embed equity into federal budget management. The report contains five recommendations for opportunities to embed equity into core financial management and procurement: “Leveraging existing financial-management authorities to increase transparency of equity in Federal spending; Incorporating equity into agencies’ evaluation of financial performance and risks; Conducting advanced market research and supplier scouting to identify and engage the business base where they are, including and attracting nontraditional companies who generally do not do business with the Government; Partnering with technical and business development organizations to

create more targeted outreach to underserved communities; and Establishing new measures of business diversity related to Federal procurement, using procurement data to evaluate progress in expanding opportunities for underserved communities, such as awards to different minority-owned firms and small business firms in rural areas. This data also could be used to inform SBA’s small business procurement scorecard and other acquisition-management tools.”

However, the report is not specific to tactical budgetary strategies the administration can employ to ensure more equal distribution of federal resources to the underserved.⁶⁰

The follow-up February 2023 executive order takes this even further and states that, starting in FY 2025 and in subsequent years, OMB shall “shall consider how the President’s Budget can support the Equity Action Plans.”

Partly Accomplished

DIRECTIVE:

Sec. 7.

The head of each agency shall produce a plan for addressing barriers in government contracting and procurement so as to ensure equitable access.

IMPLEMENTATION:

In December 2021, the Office of Management and Budget issued a memo to all executive departments and agencies on “advancing equity in federal procurement,” and dozens of federal agencies analyzed inequities in procurement and contracting processes as part of their equity plans — including the Departments of Agriculture, Commerce, Defense, Education, Energy, Homeland Security, Housing and Urban Development, State, Transportation, Veterans Affairs, Interior, Environmental Protection, Health and Human Services, Justice, and Treasury.

The Department of Justice issued a report titled “The Compelling Interest to Remedy the

Effects of Discrimination in Federal Contracting: A Survey of Recent Evidence.” For its part, the Department of Labor published a June 2021 blog post titled, “Equity Snapshot: Our Commitment to Promoting Equity in Federal Contracting.”

However, these do not rise to the level of standalone plans, and the extent to which other agencies have complied is unknown.⁶¹

The follow-up order specifies that equitable procurement plans be integrated into Agency Equity Plans, requires 15 percent of all federal procurement dollars to be spent on disadvantaged businesses, and directs the Small Business Administration to work directly with agencies to meet this target.

Partly Accomplished

DIRECTIVE:

Sec. 9.

To hereby establish an Interagency Working Group on Equitable Data to evaluate and provide recommendations for improving federal dataset disaggregation by race, ethnicity, gender, disability, income, veteran status, or other key demographic variables. The Data Working Group shall study and provide recommendations identifying inadequacies in existing Federal data collection programs, policies, and infrastructure across agencies, and strategies for addressing any deficiencies identified.

The Data Working Group shall support agencies in implementing actions, consistent with applicable law and privacy interests, that expand and refine the data available to the Federal Government to measure equity and capture the diversity of the American people.

IMPLEMENTATION:

The Interagency Working Group on Equitable Data is operational and released its first report in April 2022.⁶²

The Office of Science and Technology Policy issued a Request for Information in September 2022 requesting information and comments on how federal agencies can collaborate with government and non-government entities to produce and use more equitable data. According to a press release, the Office of Science and Technology Policy plans to use the responses it receives through this request for information to help produce case studies, share best practices, and explore new approaches that federal agencies, state, tribal, territorial, and local

governments, communities, and researchers can take to advance equitable data partnerships and collaborations.

The working group partnered with the Office of the Chief Statistician and the U.S. Census Bureau to begin the process of including questions about sexual orientation and gender identity for the first time in Household Pulse Surveys.

While the follow-up order shows increasing recognition of this need, there is still work to be done in identifying and filling data gaps and supporting the creation of the needed mechanisms.

The Equitable Data Working Group has been sunsetted and the work of the group is now done through the Subcommittee on Equitable Data, which was chartered to operationalize and institutionalize the work of the Equitable Data Working Group. We encourage frequent updates about their work.⁶³

Partly Accomplished

DIRECTIVE:

Sec. 10(a), (b), (c).

Executive Order 13950 of September 22, 2020 (Combating Race and Sex Stereotyping) is hereby revoked. The heads of agencies covered by Executive Order 13950 shall review and identify proposed and existing agency actions related to or arising from Executive Order 13950. The head of each agency shall consider suspending, revising, or rescinding any such actions, including all agency actions to terminate or restrict contracts or grants pursuant to Executive Order 13950, as appropriate and consistent with applicable law. Executive Order 13958 of November 2, 2020 (Establishing the President's Advisory 1776 Commission) is hereby revoked.

IMPLEMENTATION:

(a). The Office of Management and Budget provided guidance to federal agencies for complying with the revocation and for dismantling programming and policies established under the prior order.

(b). Some agencies have taken steps to effectuate the revocation. The Department of Labor's Office of Federal Contract Compliance Programs has announced steps it is taking to undo the past order like closing all complaints regarding alleged non-compliance

with Executive Order 13950, rescinding guidance it issued on the order, and ceasing operation of a hotline and email address created for collecting complaints of non-compliance of President Trump's order, among other steps. There is also some evidence that entities have re-established anti-bias training, including the U.S. military.

It is not evident whether steps have been taken by other agencies to comply.⁶⁴

(c) The 1776 Commission was disbanded, and the report was removed from the White House website.⁶⁵

ASSESSMENT III.

Implementation of Executive Orders Advancing Humane Immigration Policies

**Executive Order on the Establishment
of Interagency Task Force on the
Reunification of Families**

**Executive Order on Restoring Faith in
Our Legal Immigration Systems and
Strengthening Integration and
Inclusion Efforts for New Americans**

Issued on February 2, 2021

Introduction

In recognition of the clear need to root out bigotry in America's immigration system, President Biden signed several executive orders advancing more humane immigration policies. Among these orders were two that we have analyzed for implementation — the Executive Order on the Establishment of Interagency Task Force on the Reunification of Families and the Executive Order on Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New American — both of which were issued on February 2, 2021.

We assessed the implementation status of five directives contained within these orders and, as of the time of this evaluation, two were fully implemented.

Time still remains for the Biden administration to accomplish its goals, but it must act quickly and decisively. It is vital that all of President Biden's civil rights executive orders are seen through to completion. There is still time to accomplish this, but urgency is required.

Assessment Summary

Federal task forces and working groups have fulfilled directives to issue important reports concerning humane immigration policies. The Interagency Task Force on the Reunification of Families has published periodic status reports on the reunification of families separated at the U.S. border as required by its corresponding executive order. Similarly, in accordance with the Executive Order on Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans, a Task

“It is vital that all of President Biden's civil rights executive orders are seen through to completion. There is still time to accomplish this, but urgency is required.”

Force on New Americans was convened, and the Interagency Working Group on Promoting Naturalization published its federal strategy to promote naturalization — though it is not evident to what extent the report's recommendations are being implemented.

Federal agencies, however, have been less successful in adhering fully to their assigned directives. To be sure, some agencies have taken steps to comply with these executive orders. For instance, the Department of Homeland Security published a new public charge rule clarifying that immigrants will not be penalized for receiving certain public benefits. Agencies, such as the Department of Homeland Security and Customs and Immigration Service, have also committed to address immigration and naturalization barriers through reduced backlogs, streamlined application processing, expanded availability of fee waivers, and by offering immigration services to military service members and their families. However, the extent to which these promises are being fulfilled is unknown.

Some directives require agencies to put forth plans that detail how they will effectuate the executive orders and that can be relied upon to direct agency action. Unfortunately, there is a lack of evidence indicating agencies have done so. Formalized policy recommendations and strategic plans are crucial to advancing principles of good governance. Such instruments help to increase transparency into agency operations and facilitate accountability by holding agencies accountable to their commitments. Formalized recommendations

and strategic plans also help to guide short- and long-term planning and to help ensure congruency in implementation programming or policies agency-wide.

Assessment of Specific Directives

The following chart includes a granular analysis of the status of the directives that were assessed and where each of these directives stand based on publicly available information.

Executive Order on the Establishment of Interagency Task Force on the Reunification of Families

Accomplished

DIRECTIVE:
Sec. 4(b), (c).

The Task Force shall issue a report and interim progress reports thereafter identifying children separated from families between 2017 and 2021 (zero tolerance policy) and providing recommendations for reunifications, including issuance of parole, visas, or immigration benefits; trauma and mental health services for children and families; and reunification with siblings and other family members (other than parents or primary caregivers).

IMPLEMENTATION:

The task force has issued several interim reports since the executive order's issuance. According to a September 2022 report, "the Task Force has facilitated the reunification of 487 children with their separated parents in the United States and provided these families with access to behavioral health services."⁶⁶



Executive Order on Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans

Accomplished

DIRECTIVE: **Sec. 2.**

The White House Domestic Policy Council shall convene a Task Force on New Americans.

IMPLEMENTATION:

The Task Force on New Americans was convened in December 2022.⁶⁷

Partly Accomplished

DIRECTIVE: **Sec. 3(b), (c).**

Department of State, Department of Homeland Security, and Department of Justice shall each submit strategic plans, as well as implementation progress reports, to address barriers impeding immigration, including fees and other obstacles to immigration benefits or their fair and efficient adjudication.

IMPLEMENTATION:

It is not evident whether agencies have developed formal strategic plans.

Some agencies have made efforts to eliminate existing barriers to immigration. Citizenship and Immigration Services has issued new policies to improve immigration services and set new agency-wide goals to reduce immigration backlogs and to streamline processing. Similarly, the Department of Homeland Security and the Department of Veterans Affairs established resource centers to assist service members and their families with immigration matters.⁶⁸



Partly Accomplished

DIRECTIVE:

Sec. 4.

The Departments of State, Homeland Security, and Justice shall evaluate the implications public charge policies have on immigration deportations and the fear and distrust those policies and their agencies' corresponding actions have on immigrant communities and provide recommendations to reduce public confusion and concern around them.

IMPLEMENTATION:

It is not evident the extent to which each agency has performed evaluations or put forth recommendations. However, the Department of Homeland Security did adopt a new public charge rule articulating the administration's position that immigrants will not be punished for their reliance on certain public benefits, such as the Supplemental Nutrition Assistance Program, Children's Health Insurance Program, and Medicaid.⁶⁹

Partly Accomplished

DIRECTIVE:

Sec. 5(a), (b), (c), (d).

(a). Improving the naturalization process. The Secretary of State, the Attorney General, and the Secretary of Homeland Security shall, within 60 days of the date of this order, develop a plan describing any agency actions, in furtherance of the policy set forth in section 1 of this order, that they will take to:

(i). eliminate barriers in and otherwise improve the existing naturalization process, including by conducting a comprehensive review of that process with particular emphasis on the N-400 application, fingerprinting, background and security checks, interviews, civics and English language tests, and the oath of allegiance;

(ii). substantially reduce current naturalization processing times;

(iii). make the naturalization process more accessible to all eligible individuals, including through a potential reduction of the naturalization fee and restoration of the fee waiver process;

(iv). facilitate naturalization for eligible candidates born abroad and members of the military, in consultation with the Department of Defense; and

(v). review policies and practices regarding denaturalization and passport revocation to ensure that these authorities are not used excessively or inappropriately.



(b). Implementing improvements to the naturalization process. Within 180 days of the issuance of the plan developed pursuant to subsection (a) of this section, the Secretary of State, the Attorney General, and the Secretary of Homeland Security shall each submit a report to the President describing the progress in implementing the plan, any barriers to implementing the plan, and any additional areas of concern that should be addressed to ensure that eligible individuals are able to apply for naturalization in a fair and efficient manner.

(c). Strategy to promote naturalization. There is established an Interagency Working Group on Promoting Naturalization (Naturalization Working Group) to develop a national strategy to promote naturalization. The Naturalization Working Group shall be chaired by the Secretary of Homeland Security, or the Secretary's designee, and it shall include the heads of the following agencies, or senior-level officials designated by the head of each agency:

- (i).** the Secretary of Labor;
- (ii).** the Secretary of Health and Human Services;
- (iii).** the Secretary of Housing and Urban Development;
- (iv).** the Secretary of Education;
- (v).** the Secretary of Homeland Security;
- (vi).** the Commissioner of Social Security; and
- (vii).** the heads of other agencies invited to participate by the Working Group chair.

(d). Within 90 days of the date of this order, the Naturalization Working Group shall submit a strategy to the President outlining steps the Federal Government should take to promote naturalization, including the potential development of a public awareness campaign.

IMPLEMENTATION:

(a), (b). Whether agencies have developed strategic plans or progress reports is not evident.

At least a couple of agencies have indicated they are implementing strategies to address barriers to naturalization. The Department of Homeland Security and Citizen and Immigration Services are reviewing naturalization tests, simplifying and shortening naturalization forms, issuing clarifying guidance on factors impacting naturalization eligibility, and expanding the availability of fee waivers.^{70,71}

(c), (d). The Interagency Working Group published its strategy to promote naturalization in July 2021.⁷²

ASSESSMENT IV.

Implementation of Executive Orders Advancing Health Care Access

**Executive Order on Continuing to
Strengthen Americans' Access to
Affordable, Quality Health Coverage**

Issued on April 5, 2022

**Executive Order on Strengthening
Medicaid and the Affordable Care Act**

Issued on January 28, 2021

Introduction

We evaluated two executive orders that were issued to advance access to health care for all, the Executive Order on Continuing to Strengthen Americans' Access to Affordable, Quality Health Coverage, issued on April 5, 2022, and the Executive Order on Strengthening Medicaid and the Affordable Care Act, issued on January 28, 2021.

We assessed the implementation status of four directives contained within these orders and, as of the time of this evaluation, only one has been fully implemented.

Time still remains for the Biden administration to accomplish its goals, but it must act quickly and decisively. It is vital that all of President Biden's civil rights executive orders are seen through to completion. There is still time to accomplish this, but urgency is required.

Assessment Summary

To carry out these orders, federal agencies have rescinded policies established under President Trump that limited access to care. Federal agencies have done away with Trump-era conscience and religious waivers, Medicaid Section 1115 work requirements, and anti-regulatory policies (Securing Updated and Necessary Statutory Evaluations Timely (SUNSET) rule). Some directives task agencies with affirmatively expanding health care access and programming. Several agencies have initiated policies to do just that. Steps have been taken to extend and streamline enrollment periods, strengthen nondiscrimination protections within the

“But it is important that agencies show their work through public documentation, such as press releases or memoranda, detailing what precisely they have done to comply.”

Affordable Care Act (ACA), standardize eligibility policies for programs like Medicaid, and facilitate the use of tax credits to purchase ACA coverage.

Nonetheless, where revocations have occurred or commitments made, there is a lack of publicly available evidence that they are being fulsomely effectuated and fulfilled. While the Executive Order on Strengthening Medicaid and the Affordable Care Act revoked President Trump's Executive Order 13765 and Executive Order 13813, it is not evident what specifically is being done to dismantle processes and programming established under those orders. It may be assumed that agencies routinely undo policies and processes automatically once rendered void by revocations such as these. But it is important that agencies show their work through public documentation, such as press releases or memoranda, detailing what precisely they have done to comply. Doing so promotes transparency and accountability.

Additionally, while some federal agencies have complied with directives requiring them to initiate internal policy reviews, it is not evident whether other relevant agencies have done the same. Noncompliance is a particularly prominent problem with respect to directives that are vaguer and less targeted. For example, ascertaining agency progress in fulfilling directives requiring agencies to improve access to quality coverage and “strengthen benefits,” or to identify policies

that “undermine” the health insurance market, proves difficult and it is not apparent that all covered agencies have responded.

Assessment of Specific Directives

The following chart includes a granular analysis of the status of the directives that were assessed and where each of these directives stand based on publicly available information.

Executive Order on Continuing to Strengthen Americans’ Access to Affordable, Quality Health Coverage

Partly Accomplished

**DIRECTIVE:
Sec. 2.**

Agencies shall review agency actions to identify ways to continue to expand the availability of affordable health coverage, to improve the quality of coverage, to strengthen benefits, and to help more Americans enroll in quality health coverage.

IMPLEMENTATION:

Some agencies have acted to effectuate the directive, but it is not evident whether others have done the same.

To comply, some agencies have rolled back Trump-era policies that undermined health care access. The Department of Health and Human Services rolled back conscious and religious waivers, reversed restrictions on Title X family planning programs, and withdrew the Trump administration’s Securing Updated and Necessary Statutory Evaluations Timely (SUNSET) policy. The Biden administration has also taken steps to roll back Trump-era work requirements for Medicaid coverage and the Department of Health and Human Services is withdrawing anti-discrimination exceptions, which allowed states and child welfare agencies to discriminate against LGBTQI+ individuals, among other things.

IMPLEMENTATION, continued:

Furthermore, policies have been adopted to increase marketplace coverage and reverse Trump-era regulations that moved away from Healthcare.Gov, limited open enrollment, or allowed states to turn marketplaces over to private brokers. Finally, the Department of Health and Human Services has made clear its policy that anti-discrimination protections extend to gender identity and sexual orientation, amending its positioning under President Trump.

To expand coverage, the Department of Health and Human Services issued a notice of proposed rulemaking regarding Section 1557, the non-discrimination provision of the Affordable Care Act

(ACA). The NPRM would provide greater protections for discrimination based on sexual orientation and gender identity, among other proposed changes to the rule. The department further proposed a rule to standardize eligibility policies and streamline enrollment for Medicaid, Children’s Health Insurance Program, and the Basic Health Program. Furthermore, in October 2022, the administration announced that the Treasury Department was finalizing a fix to the “family glitch,” a regulatory flaw that meant that employer-based health insurance had been considered “affordable” if the coverage was affordable for the employee, even if it was not affordable for their family members.

Some agencies have also made grants and investments in programming and infrastructure that will expand health care access to people who are uninsured and who live in rural areas.⁷³

Executive Order on Strengthening Medicaid and the Affordable Care Act

Accomplished

DIRECTIVE:
Sec. 2.

In light of the exceptional circumstances caused by the ongoing COVID-19 pandemic, the Secretary of Health and Human Services shall consider establishing a Special Enrollment Period for uninsured and under-insured Americans to seek coverage through the Federally Facilitated Marketplace.

IMPLEMENTATION:

A special enrollment period took place in 2021.⁷⁴

Partly Accomplished

DIRECTIVE:
Sec. 3(a).

Agencies with authority over Medicaid and the Affordable Care Act shall evaluate existing policies and regulations to determine whether they undermine the Health Insurance Market and protections for people with preexisting conditions (including COVID); how demonstrations or waivers reduce coverage and undermine Medicaid and the Affordable Care Act; barriers to accessibility and affordability of coverage.

IMPLEMENTATION:

A March 2021 memorandum by the Department of Health and Human Services evaluates four demonstration policies (work requirements, healthy behavior incentive programs, health savings account-like arrangements, and capped federal funding and other financing changes) for their impact on Medicaid coverage and access to care. The administration has also rolled back Medicaid coverage work requirements previously established under the Trump administration and has withdrawn Section 1115 work requirements in states with approvals. Relatedly, the department initiated Medicaid Section 1115 demonstration initiatives in at least two states that will help provide continuous Medicaid coverage to children and help address nutrition and housing needs in both states.

It is not evident that other agencies have performed similar evaluations.⁷⁵

Partly Accomplished

DIRECTIVE:
Sec. 4(a).

Executive Order 13765 of January 20, 2017 (Minimizing the Economic Burden of the Patient Protection and Affordable Care Act Pending Repeal) is revoked.

Executive Order 13813 of October 12, 2017 (Promoting Healthcare Choice and Competition Across the United States) is revoked.

IMPLEMENTATION:

The administration has taken several steps to strengthen the ACA and expand access to care (see above), but it is not evident what steps agencies have taken to effectuate the revocations.



ASSESSMENT V.

Implementation of Executive Orders Advancing Fair Labor and Workers' Rights

**Executive Order on Protecting the
Federal Workforce**

Issued on January 22, 2021

**Executive Order on Worker
Organizing and Empowerment**

Issued on April 26, 2021

Introduction

We evaluated two executive orders that advance fair labor practices and workers' rights — the Executive Order on Protecting the Federal Workforce, issued on January 22, 2021, and the Executive Order on Worker Organizing and Empowerment, issued on April 26, 2021.

We assessed the implementation status of six directives contained within these orders and, as of the time of this evaluation, only four were fully implemented.

Time still remains for the Biden administration to accomplish its goals, but it must act quickly and decisively. It is vital that all of President Biden's civil rights executive orders are seen through to completion. There is still time to accomplish this, but urgency is required.

Assessment Summary

Some directives contained within these executive orders have been fulfilled, while others are still under way.

For instance, those orders establishing task forces and requiring reports on worker empowerment issues have been satisfied. The Task Force on Worker Organizing and Empowerment was convened, and its report was issued with recommendations for promoting fair labor, collective bargaining, and worker protections. Likewise, the Office of Personnel Management issued its report assessing a \$15 minimum wage for federal employees. Unfortunately, follow-up on these reports has been somewhat mixed. Although the Office of Personnel Management issued

“To be sure, there is intrinsic value in developing these reports as they provide policymakers with information they may not otherwise have and serve as useful guides for agency planning.”

formal guidance implementing a new \$15 minimum wage for federal employees, it is uncertain whether recommendations contained within the Task Force on Worker Organizing and Empowerment's report have been acted upon. To be sure, there is intrinsic value in developing these reports as they provide policymakers with information they may not otherwise have and serve as useful guides for agency planning. However, their full utility cannot be realized if their findings are not acted upon.

Other directives revoke executive orders issued by President Trump that undermined things like collective bargaining and job security for federal employees. The Office of Personnel Management plays a role in effectuating many of these revocations and has submitted guidance to federal agencies on how to comply. An Office of Personnel Management rule to rescind the final rule on “Probation on Initial Appointment to a Competitive Position, Performance-Based Reduction in Grade and Removal Actions and

Adverse Actions” from November 2020 went into effect in December 2022. However, there is little indication that agencies have taken specific steps in response.

Relations Authority, have issued guidance to assist agencies in doing so, but questions remain over agency adherence.

It is not evident to what extent agencies have complied with directives requiring evaluations of internal policies and regulations or making it a matter of official policy to negotiate with employees over employment matters. Some federal entities, such as the Office of Personnel Management and the Federal Labor

Assessment of Specific Directives

The following chart includes a granular analysis of the status of the directives that were assessed and where each of these directives stand based on publicly available information.

Executive Order on Protecting the Federal Workforce

Accomplished

DIRECTIVE:
Sec. 2(b).

Office of Personnel Management shall immediately cease processing or granting any petitions that seek to convert positions to Schedule F or to create new positions in Schedule F (for context see Executive Order 13957).

IMPLEMENTATION:

No employees had been moved to new schedule F job classifications by the time President Biden took office. The Office of Personnel Management issued guidance confirming that “Office of Personnel Management approvals of agency petitions to move positions to Schedule F are revoked. Any agency that received such an approval must cancel any actions taken based on Office of Personnel Management approval of the agency’s petition.”⁷⁶

Accomplished

DIRECTIVE:
Sec. 5.

The Director of the Office of Personnel Management shall provide a report to the President with recommendations to promote a \$15/hour minimum wage for Federal employees.

IMPLEMENTATION:

The Office of Personnel Management submitted a report to the president and released official guidance in January 2022 to implement a \$15 minimum wage for U.S. federal civilian employees.⁷⁷

Partly Accomplished

DIRECTIVE:

Sec. 3 (a), (b), (c), (d), (e)(vii).

(a). Executive Order 13836 of May 25, 2018 (Developing Efficient, Effective, and Cost-Reducing Approaches to Federal Sector Collective Bargaining) is revoked.

(b). Executive Order 13837 of May 25, 2018 (Ensuring Transparency, Accountability, and Efficiency in Taxpayer-Funded Union Time Use) is revoked.

(c). Executive Order 13839 of May 25, 2018 (Promoting Accountability and Streamlining Removal Procedures Consistent with Merit System Principles) is revoked.

(d). The Presidential Memorandum of October 11, 2019 (Executive Orders 13836, 13837, and 13839) is revoked

(e)(vii). Agencies shall review and identify existing agency actions related to or arising from the November 2020 final rule entitled “Probation on Initial Appointment to a Competitive Position, Performance-Based Reduction in Grade and Removal Actions and Adverse Actions.”

IMPLEMENTATION:

(a), (b), (c), (d). The Office of Personnel Management issued guidance to agencies in 2021 on implementing the Executive Order on Protecting the Federal Workforce and its revocations of Executive Orders 13836, 13837, and 13839.

For example, the guidance requires agencies to suspend, revise, or rescind the actions taken pursuant to Executive Order 13836, including collective bargaining agreement provisions, and to withdraw proposals in ongoing negotiations that are now invalid. The new guidance further specifies that agencies are no longer required to submit collective bargaining agreements and arbitration decisions to the Office of Personnel Management. Similarly, official time usage is now reported to the Office of Personnel Management only upon request.

Government-wide conformity with implementation is not evident.⁷⁸

(e)(vii). Office of Personnel Management initiated rulemaking to rescind the rule and implement new requirements for procedural and appeal rights in January 2022. The rule was published on November 10, 2022 and went into effect on December 12, 2022.⁷⁹

Publicly available evidence of implementation from other agencies was not found.⁸⁰

Partly Accomplished

DIRECTIVE:
Sec. 4.

The head of each agency shall elect to negotiate over employment matters and shall instruct subordinate officials to do the same.

IMPLEMENTATION:

Office of Personnel Management guidance instructs agencies to engage in good faith negotiations with employees over “the numbers, types and grades of employees or positions assigned to any organizational subdivision, work project, or tour of duty, and the technology, methods and means of performing work.” The guidance states that reaching an agreement should be the intended goal. The Federal Labor Relations Authority has also acted by releasing trainings on agencies' duty to bargain. It is not entirely evident the extent to which agencies have complied.⁸¹

Executive Order on Worker Organizing and Empowerment

Accomplished

DIRECTIVE:
Sec. 2(b), (g).

The new Task Force on Worker Organizing and Empowerment shall identify executive branch policies, practices, and programs that could be used to promote worker power, worker organizing, and collective bargaining, including in areas of the country with hostile labor laws, for marginalized workers (including women and persons of color) and hard-to-organize industries, and in changing industries. It shall also identify statutory, regulatory, or other changes that may be necessary to make policies, practices, and programs more effective means of supporting worker organizing and collective bargaining. Recommendations shall be made based on those findings.

IMPLEMENTATION:

The task force issued a final report to the president in February 2022.⁸²

Accomplished

DIRECTIVE:
Sec. 4(a).

Executive Order 13845 of July 19, 2018 (Establishing the President’s National Council for the American Worker) is revoked.

Executive Order 13931 of June 26, 2020 (Continuing the President’s National Council for the American Worker and the American Workforce Policy Advisory Board) is revoked.

IMPLEMENTATION:

The council and board were to disband in 2020 unless extended by President Trump. Trump issued extensions for both through September 2021, but this was nullified by President Biden’s executive order.⁸³

ASSESSMENT VI.

Implementation of the Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation

Issued on January 20, 2021

Introduction

In recognition of the need to ensure compliance with our nation’s civil rights laws for the LGBTQ community, the Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity or Sexual Orientation was among the first orders President Biden signed upon taking office in January 2021.

The order implements the U.S. Supreme Court’s ruling in the consolidated cases of *Bostock v. Clayton County*, *Altitude Express v. Zarda*, and *R.G. & G.R. Harris Funeral Homes v. EEOC*, which affirmed that discrimination on the basis of sexual orientation and gender identity is a form of prohibited sex discrimination.

We assessed the implementation status of the one central directive contained within this order and, as of the time of this evaluation, it was not fully implemented.

While more broadly associated with advancing racial equity, the February 2023 Executive Order on Further Advancing Racial Equity and Support for Underserved Communities Through the Federal Government also sharpens and clarifies how agencies should create, publish, and execute plans to implement this executive order. Beginning in September 2023, Agency Equity Teams at 23 specific agencies will be charged with including plans to implement this order within their Agency Equity Plans.

Assessment Summary

Directives found within the Executive Order on Preventing and Combating Discrimination on the Basis of Gender Identity and Sexual Orientation raise a number of questions around compliance.

This order requires each agency to develop a plan for ensuring adherence to Title VII protections and other federal anti-discrimination policies. Several agencies have issued guidance on or made commitments in their respective equity plans to protect against discrimination of this kind, including the Departments of Health and Human Services, Housing and Urban Development, and Justice. However, research does not reveal how many agencies have developed formal plans dedicated to the specific subject of preventing discrimination on the basis of sexual orientation and gender identity or if such plans are being implemented.

With the issuance of the February 2023 executive order, and the charge to 23 agencies to begin publishing Agency Equity Plans that include directives from this order and designate agency leadership to implement those plans, more progress should be expected in September 2023.

Assessment of Specific Directives

The following chart includes a granular analysis of the status of the directive that was assessed and where this directive stands based on publicly available information.



Partly Accomplished

DIRECTIVE:
Sec. 2.

The head of each agency shall develop a plan to ensure its compliance with Title VII and other federal anti-discrimination policies on the basis of sex, including statutes, regulations, and guidance.

IMPLEMENTATION:

A follow-up executive order was issued on February 16, 2023 that was largely focused on racial equity, but also included a directive that, starting in September 2023, Agency Equity Plans from 23 agencies must include plans to implement this executive order.

Heretofore, some action has been taken by federal agencies to further this directive, although many actions fail to rise to the level of formal standalone plans as required by the directive.

The Centers for Medicare & Medicaid Services published a notice of proposed rulemaking to promote nondiscrimination in health programs and to prohibit policies and practices that prevent “any individual from participating in a covered entity’s health program or activity consistent with their gender identity.” And the Department of Justice emphasized in a letter to state attorneys that discrimination on the basis of gender identity and sexual orientation is prohibited.

Other agencies have made commitments and statements affirming that discrimination on the

basis of sexual orientation and gender identity is disallowed as a matter of policy. Several agencies included reference to sexual orientation and gender identity protections in their agency equity plans, including the Departments of Veterans Affairs, Homeland Security, Health and Human Services, Transportation, Interior, Energy, Agriculture, Housing and Urban Development, State, and more. More specifically, the Department of Health and Human Services has apparently performed an audit for implementing the president’s order. The Department of Transportation’s equity action plan suggests it is in active stages of implementation.

The Equal Employment Opportunity Commission has made its position clear that “It is unlawful to subject an employee to workplace harassment that creates a hostile work environment based on sexual orientation or gender identity. Harassment can include, for example, offensive or derogatory remarks about sexual orientation (e.g., being gay or straight). Harassment can also include, for example, offensive or derogatory remarks about a person’s transgender status or gender transition.”⁸⁴



Endnotes

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