

Trump considers Democratic police reform proposals, draws line at immunity reduction

Francesca Chambers

June 12, 2020

President Donald Trump is open to policing reforms that Democrats have put forward such as bans on the use of chokeholds and racial profiling — but he won't budge on qualified immunity for police officers.

White House Press Secretary Kayleigh McEnany said this week that eliminating “qualified immunity,” the legal standard that protects police from being held liable for actions taken in the line of duty that are not explicitly against the law, is a “nonstarter” for the administration.

A senior White House official told McClatchy, however, that the White House is willing to discuss “everything” else that Democrats are seeking in a bill they introduced Monday at a news conference that featured Congressional Black Caucus Chair Karen Bass, New Jersey Sen. Cory Booker and other sponsors of the legislation that is backed by party leaders.

“We’re open to a discussion on anything, but we will not discuss qualified immunity,” the White House official said. “We have indicated that everything is on the table and open for discussion except for this one thing.”

Debate over the provision could be a key to success of legislation championing policing reforms that has the renewed interest of lawmakers following the death of George Floyd, a black man who died in police custody last month.

Backers of the doctrine that has evolved through court rulings say the immunity standard shields police from frivolous civil lawsuits.

The White House’s McEnany argued that limitations on immunity “would result in police pulling back.”

Opponents of qualified immunity say that too much legal cover is provided to police to use excessive and at times deadly force, resulting in too low a conviction rate in police misconduct cases, and the protection should be narrowed or abolished.

“It has emerged to some degree as a flashpoint,” Rep. Hakeem Jeffries, D-N.Y., chairman of the House Democratic Caucus, told McClatchy in an interview.

The congressional effort to end or limit qualified immunity is supported by an unusual political coalition.

Reps. Justin Amash, Libertarian-Mich., Tom McClintock, R-Calif., and the Democratic “Squad” of four progressive women of color under the age of 50 — Reps. Ayanna Pressley of Massachusetts, Alexandria Ocasio-Cortez of New York, Ilhan Omar of Minnesota and Rashida Tlaib of Michigan — are all backing legislation to end the immunity protection.

The current qualified immunity system “prevents accountability for the ‘bad apples’ and undermines the public’s faith in law enforcement,” Amash said last week. “It’s at odds with the text of the law and the intent of Congress, and it ultimately leaves Americans’ rights without appropriate protection.”

McClintock, who has a lifetime rating of 98.61% from the American Conservative Union, said at a House Judiciary Committee hearing on Wednesday that qualified immunity “as currently applied has no place in a nation ruled by law.”

Sen. Cory Booker, one of the lead sponsors of the Democrats’ policing bill, said in a McClatchy interview that police officers should not be held to a different standard than the public they serve.

“The idea that it is impossible, virtually impossible, to hold a police officer accountable in civil court for violating the civil rights of another person is an unacceptable reality,” Booker said.

Sen. Tim Scott of South Carolina, the Senate’s only black Republican, is working on an alternative bill to the Democratic version for the GOP and met with White House officials on Tuesday on Capitol Hill to discuss the legislation.

Democrats are insisting that an overhaul of qualified immunity be included in the legislation that ultimately emerges.

“I am willing to negotiate as long as it creates the kind of change that America is demanding,” Booker said, but “horrific actions” by police cannot go unchecked.

Booker said the White House position on immunity “makes no sense and is indefensible.”

Jeffries said that any serious discussion about policing must “involve accountability for police officers who cross the line without justification both criminally and civilly.”

“There’s always an openness to trying to achieve meaningful progress by arriving at common ground with the White House. However, it is important for the White House to demonstrate that they are willing to have a real discussion about issues like qualified immunity and try to come to some resolution,” he said.

“To the extent that the White House simply draws a line in the sand, that would be problematic.”

Jeffries said he had not had any conversations with Scott or the White House and that Democrats, who have the majority in the House, are focused on passing their bill currently and await Senate legislation.

“There is a basis and reason to believe that we can make progress on police reform in a meaningful way following the example of other areas where we were able to get things done,” he

said, referring to criminal justice reform, the US-Canada-Mexico trade agreement and appropriations for Historically Black Colleges and Universities that the White House supported.

House Speaker Nancy Pelosi, responding to a question at a Thursday news conference, said, “I don’t know what the overtures are from the White House, but I hope that they are sincere and I hope that they are real and I hope that they are statutory, that they will be the law of the land.”

She said that a review of the qualified immunity doctrine that “protects police officers from prosecution in spite of bad conduct” is a necessary feature of the Democratic bill.

Trump has not publicly commented on the issue directly. He said at a Dallas event on Thursday that he is “working to finalize” an executive order that would encourage police departments “to meet the most current professional standards for use of force.” That includes “tactics for de-escalation,” which he defined as “force, but force with compassion” that allows law enforcement to use “real strength, real power.”

“If they’re allowed to do their job, they’ll do a great job. And you always have a bad apple, no matter where you go,” Trump said. “I can tell you there are not too many of them in the police department.”

Regardless of the executive order, Trump wants Congress to act on policing reforms, the senior White House official told McClatchy.

While the White House has not detailed what reforms it supports, the president said at his Thursday evening roundtable in Texas that he favors additional training, recruiting, equipment and community engagement for police.

The bill that House and Senate Democrats jointly unveiled this week would require police body cameras, create a database of police misconduct, explicitly prohibit law enforcement from using chokeholds to subdue suspects, improve training for police and eliminate qualified immunity, among other proposals.

Leading congressional Republicans have said they would support a ban on police chokeholds.

“The idea that somebody ... would have a chokehold against somebody who is handcuffed to others, there should be severe consequences,” House Minority Leader Kevin McCarthy, a California Republican, said at a press conference on Thursday.

Clark Neily, vice president for criminal justice at the libertarian Cato Institute, said lawmakers from all areas of the ideological spectrum are coming together. “It has become virtually impossible for any elected politician to remain indifferent to the deafening voices now calling for reform.”