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April 23, 2021

Via Electronic Mail

The Honorable Merrick Garland
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

RE: Instituting a Moratorium on Disbursement of Federal Funds to Law Enforcement Agencies Until DOJ Audits Each Agency for Compliance with Title VI Non-Discrimination Provisions

Dear Attorney General Garland:

Since your confirmation vote on March 10, 2021, at least 17 Black people have been killed by law enforcement officers, and since the beginning of President Biden's Administration, at least 40 Black people have been killed by law enforcement.¹ Just in the past two weeks, body worn camera video has been released regarding multiple children killed by the police, including in Chicago, Illinois and Columbus, Ohio.² Although we are gratified by the conviction of the now-former police officer who killed George Floyd last summer, we are mindful of the ongoing, deep, and structural racism that characterizes policing in the United States. Since Eric Holder served as Attorney General, we have asked the Department of Justice to use its skills and resources to confront this issue at a systemic level. Beginning in 2015, we raised with U.S. Department of Justice ("Department" or "DOJ") and White House officials the importance of ensuring that the Department stewards its funds in accordance with Title VI of the Civil Rights Act of 1964, ensuring that law enforcement agencies that engage in discrimination do not receive federal grant funds.

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF),³ we urge the Department to immediately cease disbursing funds to all law enforcement agencies until the

¹ See POLICE SHOOTINGS DATABASE, Wash. Post (April 20, 2021), <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>.

² Alexis McAdams, *Chicago protest Little Village: Thousands march for justice in Adam Toledo CPD killing*, ABC7 (Apr. 18, 2021), <https://abc7chicago.com/adam-toledo-little-village-protest-chicago-sunday/10526179/>; 10TV Web Staff, *Family: 16-year-old girl shot and killed by police officer in southeast Columbus*, 10TV (April 20, 2021), <https://www.10tv.com/article/news/local/16-year-old-girl-shot-and-killed-by-police-officer-in-southeast-columbus/530-c77bb47e-97d1-47b5-8ed8-099c105a0f20>.

³ LDF is the nation's first and premier civil rights legal organization devoted to racial justice. LDF's work to address police violence and misconduct dates back to its inception. Among LDF's most notable cases was Thurgood Marshall's defense of Black men who were brutally beaten by police in an effort to force confessions to crimes they did not commit in Groveland, Florida. The LDF team's tenacious efforts in the Groveland case are captured in the 2013 Pulitzer Prize-winning book, *Devil in the Grove: Thurgood Marshall, the Groveland Boys, and the Dawn of a*

Department can ensure that each law enforcement agency which receives federal funds is not discriminating on the basis of race, color, or national origin, as required by Title VI of the Civil Rights Act of 1964. The relentless and disproportionate police intimidation, harassment, and violence against Black and Brown people throughout the United States has continued unabated for far too long, including the recent and fatal violence against 20-year-old Daunte Wright in Brooklyn Center, Minnesota. The Department must take immediate action to address this threat to the safety of Black and Brown communities and prevent unconstitutional police conduct against people of color in the United States.

I. There Is A Crisis of Racial Discrimination by Law Enforcement Agencies that Must Be Examined by the Department of Justice

The Department's own investigations as well as independent research have established that law enforcement officers disproportionately stop,⁴ search,⁵ and arrest⁶ Black and Brown people often for minor infractions.⁷ While national data about officers' uses of force remains unavailable

New America. In 2015, LDF's Thurgood Marshall Institute launched a Policing Reform Campaign in the aftermath of the police killings of Eric Garner, Michael Brown, Walter Scott, and Freddie Gray and subsequent public demands for police accountability. After five years of working side-by-side with activists and lawyers across the country, the Campaign is now a permanent project of LDF—the Justice in Public Safety Project.

⁴ See Andrew Gelman, et al., *An Analysis of the New York City Police Department's "Stop-and-Frisk" Policy in the Context of Claims of Racial Bias*, JOURNAL OF THE AMERICAN STATISTICAL ASSOCIATION 816 (2007) (finding that in 1998-1999, 51% of the New York Police Department's stops were of Black residents even though Black residents made up only 25% of the City's population), <http://www.stat.columbia.edu/~gelman/research/published/frisk9.pdf>; U.S. Dep't of Justice, *Investigation of the Baltimore Police Department*, 48 (Aug. 10, 2016) (finding that between January 2021 and June 2015, Black Baltimoreans constitutes 84% of the stops the Baltimore Police Department conducted while constituting only 63% of the City's population), <https://www.justice.gov/crt/file/883296/download>; The Vera Institute, *An Unjust Burden: The Disparate Treatment of Black Americans in the Criminal Justice System* 7-8 (May 2018) (compiling studies that demonstrate Black people are disproportionately stopped by law enforcement officers) <https://www.vera.org/downloads/publications/for-the-record-unjust-burden-racial-disparities.pdf>; Letter from NAACP Legal Defense and Educational Fund, Inc., et al. to U.S. Attorney General Loretta Lynch 2-3 (July 13, 2015), (while the North Charleston community is 47% African American and 42% white, according to publicly available data, from January 2011 to May 2015, of the 122,818 drivers who were released without arrest or citation, 65% of those North Charleston police officers stopped were Black and 33% were white), <https://www.naacpldf.org/wp-content/uploads/NAACP-LDF-et-al-Letter-to-Attorney-General-Lynch-Regarding-N.-Charleston-2.pdf> (The North Charleston community is according to publicly available data.

⁵ U.S. Department of Justice, *Investigation of the Ferguson Police Department*, 64-65 (Mar. 4, 2015) (finding that from "October 2012 to October 2014, 11% of stopped [B]lack drivers were searched, whereas only 5% of stopped white drivers were searched" and that "African Americans were 26% less likely to have contraband found on them than whites"), https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf; *Investigation of the Baltimore Police Department*, *supra* note 4 at 53 (finding that "[d]uring pedestrian stops, officers searched 13 percent of African Americans compared to only 9.5 percent of other people – making African Americans 37 percent more likely to be searched when stopped than other residents."); Bureau of Justice Statistics, *Special Report: Contacts between Police and the Public*, 1 (2005) (finding that in 2005, Black people were searched 9.5% of the time when stopped whereas white people were searched only 3.6% of the time when stopped), <https://www.bjs.gov/content/pub/pdf/cpp05.pdf>; NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, INC., FERGUSON IN FOCUS 5 (Oct. 2014) ("a staggering 92% of the searches conducted by the Ferguson Police Department were of African-Americans, despite the fact that police were at least 10% more likely to find contraband on Whites."), https://www.naacpldf.org/wp-content/uploads/Ferguson-in-Focus_4_Criminal-Justice_.pdf.

⁶ See e.g., The Sentencing Project, *Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System* 1 (Apr. 19, 2018) (finding that "African-American adults are 5.9 times as likely to be incarcerated than white"), <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>.

⁷ See e.g., ACLU New Jersey, *Selective Policing, Racially Disparate Enforcement of Low-Level Offenses in New Jersey* (Dec. 2015), https://www.aclu-nj.org/files/7214/5070/6701/2015_12_21_aclunj_select_enf.pdf.

due to limited data collection, the Washington Post reports that since 2015, nearly 1,000 people have been shot and killed by officers each year and that Black Americans are shot and killed by officers at more than twice the rate of white Americans.⁸ Since the start of 2021, law enforcement officers throughout the United States have killed at least 274 people.⁹ And where consent decrees are being implemented, police killings persist: since 2015, 21 people have been killed by police in Baltimore, Maryland; 42 people have been killed by police in Chicago, Illinois; 9 people have been killed by police in New Orleans, Louisiana; and 8 people have been killed by police in Newark, New Jersey.¹⁰ To limit these aggressive actions and deadly uses of force, and as required by Title VI, law enforcement agencies that receive federal funds¹¹ must ensure that they are not acting in a discriminatory manner, including through racially disparate stops, searches, arrests, or uses of deadly or less-lethal force.

We have seen repeatedly in recent incidents that interactions with law enforcement officers for even minor infractions can lead to unnecessary and sometimes fatal uses of force. On April 11, 2021, during the criminal trial of former Minneapolis police officer Derek Chauvin for the killing of George Floyd, only a short distance from the courthouse where the trial was taking place, a Brooklyn Center police officer shot and killed 20-year-old Daunte Wright.¹² The officer initiated the traffic stop of Mr. Wright because Mr. Wright either had air fresheners hanging on his rearview mirror or his license plates had expired.¹³ On April 15, the city of Chicago released body-worn camera footage of a Chicago Police officer shooting and killing 13-year-old Adam Toledo after he had raised his empty hands in the air.¹⁴ And earlier this month, on April 2, Army second lieutenant Caron Nazario filed a lawsuit against the Windsor Police Department after Windsor police officers drew their firearms, threatened to use deadly force against him, and pepper-sprayed him during a

⁸ See Police Shootings Database, WASH. POST, <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/>.

⁹ *Id.*; see also *Mapping Police Violence* (stating 319 people have been killed by police in 2021), <https://mappingpoliceviolence.org/>.

¹⁰ *Id.*

¹¹ From 2012-2019, the Chicago Police Department received around \$34.6 million in federal funding from DOJ. See NAACP Legal Defense and Educational Fund, Inc., National Police Funding Database, <https://policefundingdatabase.tminstituteldf.org/report>. From 2012-2019, the Aurora Police Department received around \$2.1 million in federal funding from DOJ. See *id.* From 2012-2019, the Atlanta Police Department received around \$9.7 million in federal funding from DOJ. See *id.* From 2012-2020, the Department of Justice provided over \$7.9 million in federal assistance from the Office of Justice Programs to the City of Columbus. Federal Funding Assistance for the City of Columbus Ohio, USA Spending, <https://www.usaspending.gov/search/?hash=a2fab46bc8611a6660ed2151c8a2b669> (filter award type to grants, place of performance to City, Columbus OH, and recipient to City of Columbus).

¹² Oliver Laughland and Amudalat Ajasa, *Daunte Wright and George Floyd: another chapter in America's recurring tragedy*, GUARDIAN (Apr. 18, 2021), <https://www.theguardian.com/us-news/2021/apr/17/daunte-wright-george-floyd-americas-recurring-tragedy>;

¹³ Denise Lavoie, *Explainer: Can officers stop drivers for air fresheners?*, AP NEWS (Apr. 15, 2021), <https://apnews.com/article/death-of-daunte-wright-shootings-police-minnesota-laws-830f67a66eee832a87d3642fe8ca50e8>; Corky Siemaszko, *Daunte Wright was stopped for expired plates, but driving while Black may have been his 'crime,'* NBC NEWS (Apr. 12, 2021), <https://www.nbcnews.com/news/us-news/daunte-wright-was-stopped-expired-plates-driving-while-black-may-n1263878>.

¹⁴ Alexis McAdams, *Chicago protest Little Village: Thousands march for justice in Adam Toledo CPD killing*, ABC7 (Apr. 18, 2021), <https://abc7chicago.com/adam-toledo-little-village-protest-chicago-sunday/10526179/>; Julie Bosman and Neil MacFarquhar, *Video Is Released of Chicago Police Fatally Shooting 13-Year-Old*, N.Y. TIMES (Apr. 15, 2021) <https://www.nytimes.com/2021/04/15/us/adam-toledo-chicago-shooting-video.html>.

traffic stop allegedly initiated due to Mr. Nazario not having a license plate on his vehicle, although his temporary license plate was taped to his rear window.¹⁵

Unfortunately, these incidents—stops for minor infractions that lead to law enforcement officers’ uses of often fatal force—are far from new, especially for communities of color. For example, on August 24, 2019, in Aurora, Colorado, officers stopped 23 year-old Elijah McClain after a call for service about a “Black male” in certain dress who “looked sketchy.”¹⁶ An independent investigation of the Aurora Police officers’ encounter with Elijah McClain determined that officers’ initial stop of Mr. McClain was not supported by reasonable suspicion, their decision to frisk him was not justified, and that the record did not support officers’ decision to subject Mr. McClain to one of two neckholds.¹⁷ Mr. McClain was apologetic to officers as they used force against him, explaining, “I was just going home...I’m an introvert and I’m different...I’m so sorry.”¹⁸ Yet, the encounter resulted in his death.¹⁹ On June 12, 2020, Atlanta police officers encountered Rayshard Brooks who had fallen asleep in the drive-through lane of a Wendy’s parking lot.²⁰ After a scuffle, Mr. Brooks began to run away from the officers and attempted to tase the officers. As Mr. Brooks was running away from the officers, one officer shot Mr. Brooks in the back twice, killing him.²¹ One officer kicked Mr. Brooks as he lay bleeding and immobile while another stood on his shoulder.²²

II. DOJ Must Temporarily Cease All Federal Funding to Law Enforcement Agencies and Resume Funding Only to Agencies that It Confirms Are Not Engaging in Unlawful Discrimination in Violation of Title VI

The Department has the power and obligation to enforce Title VI’s non-discrimination requirements and its own implementing regulations to prevent race discrimination by law enforcement agencies that receive federal funds.²³ Title VI of the Civil Rights Act of 1964 requires that, “[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”²⁴ Under DOJ’s regulations

¹⁵ John Woodrow Cox and Michael S. Rosenwald, *Caron Nazario saw Eric Garner, who he called ‘uncle,’ die in police hands. Then officers pepper-sprayed him six years later.*, WASH. POST (Apr. 14, 2021), <https://www.washingtonpost.com/dc-md-va/2021/04/14/caron-nazario-eric-garner/>; Stephen Faleski, *Lawsuit alleges Windsor police misconduct*, SUFFOLK NEWS HERALD (Apr. 9, 2021), <https://www.suffolknewsherald.com/2021/04/09/lawsuit-alleges-windsor-police-misconduct/>.

¹⁶ Investigation Report and Recommendations, City of Aurora, Colorado Pursuant to a City Council Resolution Approved July 20, 2020, 2 (Feb. 22, 2021), [https://www.auroragov.org/UserFiles/Servers/Server_1881137/File/News%20Items/Investigation%20Report%20and%20Recommendations%20\(FINAL\).pdf](https://www.auroragov.org/UserFiles/Servers/Server_1881137/File/News%20Items/Investigation%20Report%20and%20Recommendations%20(FINAL).pdf) (hereinafter “*Aurora Report*”); Kim Bellware, *Police had no legal reason to place Elijah McClain in chokehold, probe of death finds*, WASH. POST (Feb. 23, 2021), <https://www.washingtonpost.com/nation/2021/02/23/elijah-mcclain-investigation/>.

¹⁷ *Aurora Report*, *supra* note 17 at 3-6.

¹⁸ *Id.* at 6.

¹⁹ *Id.* at 18-63.

²⁰ Matt Zapotosky, Derek Hawkins, and Fenit Nirappil, *Former Atlanta officer who shot Rayshard Brooks charged with murder, other offenses*, WASH. POST (June 17, 2020), https://www.washingtonpost.com/national-security/former-atlanta-officer-who-shot-rayshard-brooks-charged-with-murder-other-offenses/2020/06/17/abbl1a638-b0c2-11ea-856d-5054296735e5_story.html.

²¹ Aimee Ortiz, *What to Know About the Death of Rayshard Brooks*, N.Y. TIMES (Jan. 29, 2021), <https://www.nytimes.com/article/rayshard-brooks-what-we-know.html>.

²² *Id.*

²³ See 28 C.F.R. § 42.108 (Procedure for effecting compliance).

²⁴ 42 U.S.C. § 2000d.

implementing Title VI, recipients of federal funds “may not, directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination because of their race, color, or national origin, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, or national origin.”²⁵ As Dr. Martin Luther King, Jr. expressed, the passage of the Civil Rights Act of 1964 represented “the beginning of a second emancipation proclamation providing a comprehensive legal basis for equality of opportunity.”²⁶ DOJ must make real the promise of Title VI of the Civil Rights Act of 1964 and meaningfully enforce its requirements to prevent the distribution of federal funds to law enforcement agencies that discriminate on the basis of race.

The Department must ensure it is effectively enforcing Title VI’s non-discrimination requirements to reduce unnecessary police killings of Black and Brown people throughout the United States and must take proactive measures to ensure that it only disburses federal funds to law enforcement agencies that can demonstrate their officers’ enforcement activity is not discriminatory, including that it does not have a disparate impact on communities of color. A mere assurance by a law enforcement agency that it is in compliance with Title VI, without data to support it, is insufficient. The Department must rigorously review data and reports from law enforcement agencies before providing any federal funds to ensure that the agencies are not discriminating through officers’ enforcement activity or disparate provision of law enforcement services. Additionally, DOJ must critically evaluate its own policies, protocols, and procedures for disbursing federal funds to law enforcement agencies and comprehensively determine whether recipients of federal funds are acting in a discriminatory manner. Title VI prohibits the Department from rewarding law enforcement agencies that engage in race discrimination and supporting their discriminatory practices by providing them with federal funds.

Until the Department has developed clear standards for careful, proactive enforcement of Title VI and conducted an audit of all law enforcement agencies that receive federal funds to ensure they are not engaging in race discrimination, we call on you to suspend any and all grant funding to law enforcement agency applicants and recipients. Law enforcement agencies cannot receive federal funds until they cease racially discriminatory law enforcement activity.

I welcome the opportunity to speak with you about this urgent and important issue at your earliest convenience. If you have any questions or concerns, please do not hesitate to contact Lisa Cylar Barrett, Director of Policy at lcylarbarrett@naacpldf.org.

Sincerely,



Sherrilyn A. Ifill
President and Director Counsel

cc: Vanita Gupta, Associate Attorney General, U.S. Department of Justice

²⁵ See 28 C.F.R. § 42.104(b)(2).

²⁶ Dr. Martin Luther King, Jr. Nobel Laureate, The Quest for Peace and Justice (Dec. 11, 1964), <https://www.nobelprize.org/prizes/peace/1964/king/lecture/>.