

December 21, 2022

Via Electronic Mail

The Honorable Vanita Gupta,
Associate Attorney General of the United States,
The Honorable Kristen Clarke,
Assistant Attorney General of the United States,
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

RE: Growing Threat of “Constitutional Sheriffs” to our Multi-Racial Democracy

Dear Associate Attorney General Gupta and Assistant Attorney General Clarke:

On September 13, 2022, LDF sent a letter to Attorney General Garland outlining our concerns about the Department of Justice’s (DOJ) failure to prioritize the threat posed by law enforcement officials with ties to anti-governmental and white nationalist groups, and recommended steps the Department should take to address this threat.¹ We await the Department’s response to our September 13, 2022 letter and reiterate our deep concern in light of a recent rule change in Arizona that is likely to expand the influence of self-proclaimed “constitutional sheriffs” by permitting them to train law enforcement officers in that state. This is a particular threat for Black and Brown communities that experience disproportionate harms at the hands of law enforcement.

I. The “Constitutional Sheriffs” Movement is Growing

The Constitutional Sheriffs and Peace Officers Association (CSPOA) proclaims that “[t]he law enforcement powers held by the sheriff supersede those of any agent, officer, elected official or employee from any level of government when in the jurisdiction of the county.”² The constitutional sheriff movement initially began in the 1970s with white supremacist roots³ and has recently grown in influence. Texas and Montana permit law enforcement officers to receive continuing education credit for attending CSPOA events.⁴ Richard Mack, who founded the CSPOA

¹ Letter from Legal Defense Fund to Attorney General Merrick Garland, DOJ Must Enhance Efforts to Address the National Security Threat Posed By Law Enforcement Officials With Ties to Anti-Governmental and White Nationalist Groups (Sep. 13, 2022), <https://www.naacpldf.org/wp-content/uploads/2022-09-13-LDF-letter-re-law-enforcement-ties-to-extremist-groups-SIGNED.pdf>.

² *About CSPOA*, Const. Sheriffs & Peace Officers Ass’n, <https://cspoa.org/about/> (last visited Dec. 8, 2022).

³ Ashley Powers, *The Renegade Sheriffs*, *The New Yorker* (Apr. 23, 2018), <https://www.newyorker.com/magazine/2018/04/30/the-renegade-sheriffs> (“The idea of a constitutional sheriff . . . was first proposed by William Potter Gale, [who] embraced a belief system called Christian Identity, and . . . preached that the Constitution was a divinely inspired document intended to elevate whites above Jews and racial minorities.”)

⁴ *The Constitutional Sheriffs and Peace Officers Association (CSPOA) and Richard Mack: How Extremists Are Successfully Infiltrating Law Enforcement*, ANTI-DEFAMATION LEAGUE (Sept. 20, 2021), <https://www.adl.org/resources/reports/the-constitutional-sheriffs-and-peace-officers-association-cspoa-and-richard-mack>.

in 2011, has indicated that 2021 was a record year in which the CSPOA held 72 events around the country for the general public and law enforcement officers.⁵

A recent rule change approved by the Arizona Governor's Regulatory Review Council, set to take effect in December 2022, will permit individual law enforcement agencies in Arizona to decide what continuing education courses to offer to officers.⁶ In 2021, the CSPOA sought to provide training to Arizona law enforcement and submitted a proposal to the Arizona Peace Officer Standards and Training Board, but its proposal was rejected.⁷ The rule change permitting individual law enforcement agencies to make decisions about continuing education opens a pathway for CSPOA to train officers in Arizona in the future. More than half of Arizona's 15 county sheriffs appear to be aligned already with at least some of the ideologies of constitutional sheriffs.⁸ Investigative journalists identified eight of 15 Arizona sheriffs as members of Protect America Now, affiliated with the CSPOA, or who have supported through rhetoric or actions the "constitutional sheriff" ideology, typically a belief that sheriffs need not enforce laws they deem unconstitutional.⁹ One of these sheriffs, Mark Lamb of Pinal County, Arizona, launched Protect America Now in 2021 to "Support Sheriffs Across the Country And Oppose Radical Progressive Agendas And Ideas."¹⁰

The constitutional sheriffs movement is also being promoted through trainings by organizations claiming to have constitutional expertise.¹¹ Sheriff Lamb was a member of the Claremont Institute's inaugural class of Sheriff Fellows in 2021, whom the Institute gathered to

⁵ Isaac Simonelli, *Rule change opens new path for 'constitutional sheriff' group to train Arizona law enforcement*, Arizona Center for Investigative Reporting (Nov. 16, 2022), https://azcir.org/news/2022/11/16/azpost-rule-change-opens-path-constitutional-sheriff-training/?utm_source=substack&utm_medium=email ("The change to Arizona's continuing education training rules, approved by the Arizona Governor's Regulatory Review Council, allows law enforcement agency heads to approve courses because of the varying needs of agencies, explained AZPOST Executive Director Matthew Giordano, who proposed the shift.") (hereinafter, "*Rule change opens new path*").

⁶ *See id.*

⁷ *See id.*

⁸ Isaac Simonelli, *Arizona 'ground zero' for extremist, anti-government sheriff movement*, ARIZ. CTR. FOR INV. REPORTING (Oct. 21, 2022), <https://www.azmirror.com/2022/10/21/arizona-ground-zero-for-extremist-anti-government-constitutional-sheriffs-movement/> ("AZCIR reviewed postings, comments and threads on social media platforms, public statements and documents, and conducted dozens of interviews to identify Arizona sheriffs who are either directly or ideologically affiliated with the movement. AZCIR then compared its findings with criteria established by national experts and researchers on domestic extremism to verify affiliations.")

⁹ *Id.*

¹⁰ Press Statement, PROTECT AMERICA NOW (Feb. 23, 2021), <https://protectamericanow.com/news/fighting-for-american-values/>; *see also* *Constitutional Sheriffs*, SOUTHERN POVERTY LAW CENTER, <https://www.splcenter.org/fighting-hate/extremist-files/ideology/constitutional-sheriffs> ("A new national constitutional sheriff's group also emerged in 2021. . . . Protect America Now. . . has an advisory board with a host of constitutional sheriffs.")

¹¹ The Claremont Institute's website states that its mission is, in part, "to teach the principles of the American Founding," including "the ingenious political science of the Constitution; and the popular constitutionalism or reverence necessary for the maintenance of free government." Claremont Institute, Mission & Overview, <https://www.claremont.org/page/claremonts-mission/> (last visited Dec. 8, 2022). Liberty First Society claims on its home page to be "America's #1 Trusted and Recommended Online Authority for Constitutional Education and Training" and offers courses on "the unique education in the history and application of the Constitution of the United States." Liberty First Society, <https://libertyfirstsociety.com/> (last visited Dec. 8, 2022).

address, in part, “today’s militant progressivism and multiculturalism.”¹² The Institute does not elaborate on what it understands “today’s militant progressivism and multiculturalism” to be but states that the Fellowship provides “particular emphasis on the role of law enforcement in maintaining liberty.”¹³ Of the first eight sheriffs selected as fellows by the Claremont Institute in 2021, six are associated with the CSPOA.¹⁴ Liberty First Society, an anti-governmental group,¹⁵ has also created a “Constitutional Sheriff’s Training” program.¹⁶

II. Sheriffs are Threatening to Engage in Voter Intimidation and Election Interference Tactics

The CSPOA and Protect America Now promote disinformation regarding the 2020 election and encourage the use of voter intimidation tactics. On July 12, 2022, Richard Mack declared that investigating voter fraud was a “holy cause” and would be the CSPOA’s top priority.¹⁷ Meanwhile, Protect America Now and True the Vote formed “ProtectAmerica.Vote” in June 2022, a campaign purporting to address voter fraud, which also promoted the false claim that the 2020 election was stolen.¹⁸ The collaboration between Protect America Now and True the Vote is working to raise \$1 million for grants to fund sheriffs to surveil ballot drop boxes and to support an anonymous hotline for tips about alleged voter fraud.¹⁹ Such surveillance may intimidate voters, particularly Black and Brown voters whose communities have been disparately harmed by law enforcement and who may wish to avoid potential interactions with them. These tactics are not new—there is a well-documented history of law enforcement officials intimidating voters, including Black voters. For example, in July 2022, the Johnson County, Kansas Legal Department wrote a public letter clarifying the limitations on a sheriff’s role in elections after the sheriff’s conduct gave “the

¹² Sheriffs Fellowship, CLAREMONT INSTITUTE, <https://www.claremont.org/page/sheriffs-fellowship/> (“[S]heriff applicants will be selected for their character, aptitude, accomplishments, zeal, and community reputation to gather for five days to study and discuss the political-philosophical, institutional, and historical arc leading from the American Founding to today’s militant progressivism and multiculturalism, with particular emphasis on the role of law enforcement in maintaining liberty.”) (last visited Dec. 8, 2022).

¹³ See *id.*

¹⁴ Adam Rawnsley, *MAGA Institute Honors Sheriffs Who Defy Laws They Don’t Like*, DAILY BEAST (Nov. 22, 2021), <https://www.thedailybeast.com/maga-claremont-institute-honors-sheriffs-who-defy-laws-they-dont-like>.

¹⁵ *Anti-government Movement*, SOUTHERN POVERTY LAW CENTER, <https://www.splcenter.org/fighting-hate/extremist-files/ideology/antigovernment> (listing Liberty First Society as an anti-governmental group) (last visited Dec. 8, 2022).

¹⁶ *Constitutional Sheriff’s Training*, LIBERTY FIRST SOCIETY, <https://libertyfirstsociety.com/constitutional-sheriffs-training/> (last visited Dec. 8, 2022).

¹⁷ Peter Eisler & Nathan Layne, *Right-wing U.S. sheriffs vow to probe 2020 voter-fraud claims*, REUTERS, July 20, 2022, <https://www.reuters.com/world/us/right-wing-us-sheriffs-vow-probe-2020-voter-fraud-claims-2022-07-20/>.

¹⁸ Peter Stone, *Rightwing sheriffs’ groups ramp up drives to monitor US midterm elections*, THE GUARDIAN, August 17, 2022, <https://www.theguardian.com/us-news/2022/aug/17/rightwing-sheriffs-trump-midterm-elections-voting-arizona>; Michael Barajas & Jessica Pishko, *The Big Lie Messengers Who Carry a Badge and Gun*, BOLTS (2022), <https://boltsmag.org/true-the-vote-sheriffs/> (“Engelbrecht also announced that her group would partner with the Constitutional Sheriffs and Peace Officers Association (CSPOA)”).

¹⁹ Areeba Shah, *Far-right “constitutional sheriffs” now turn to hunting “fraud” in midterm elections*, SALON (2022), <https://www.salon.com/2022/09/20/far-right-constitutional-sheriffs-now-turn-to-hunting-fraud-in-midterm/>; see also Jessica Pishko, *These Sheriffs Say They’re More Powerful Than the President. Now, They’re Targeting Elections.*, REVEAL (2022), <http://revealnews.org/article/big-lie-sheriffs-target-us-elections/>.

appearance that the Sheriff's office is attempting to interfere with an election.”²⁰ And during the 2000 election, Black Floridians recounted being intimidated by police presence near several polling locations, being questioned by officers about criminal records when traveling to polling locations, and being subjected by Florida Highway Patrol to a checkpoint on a road connecting largely Black suburbs to a polling location.²¹

CSPOA sheriffs have also previously been suspected of engaging in election interference. In February 2022, the Michigan Attorney General Dana Nessel and the Michigan State Police launched an investigation to determine whether Barry County Sheriff Dar Leaf, CSPOA'S 2016 “Sheriff of the Year,”²² and eight other people conspired to steal voting machines in the district.²³ And in 2021, another CSPOA-affiliated sheriff, Christopher Schmaling of Racine County, referred recommendations for criminal charges against five of the six members of the Wisconsin Elections Commission to the County District Attorney, alleging that it was a violation of law not to send special voting deputies into nursing home facilities even though visitors were prohibited due to the COVID-19 pandemic.²⁴ The District Attorney declined to charge the Elections Commission officials, determining she lacked jurisdiction to do so.²⁵

III. Sheriffs Are Being Sought Out to Criminalize those who Provide Access to Books that Permit Learning about Structural Racism, Sexism, and LGBTQ Identities

Groups such as Moms for Liberty and County Citizens Defending Freedom (CCDF) are filing criminal complaints with sheriffs regarding books they seek to ban from libraries which would prevent learning a truthful account of historic and present-day structural racism, sexism, and support for LGBTQ identities.²⁶ For example, the chair of a Moms for Liberty chapter filed a criminal complaint against a school library in Indian River County, Florida for not removing

²⁰ Letter from Chief Counsel Peg Trent to Sheriff Calvin Hayden, 2 (July 7, 2022), <https://dfv6pkw99pxmo.cloudfront.net/wp-content/uploads/2022/07/Election-Security-Letter.pdf>.

²¹ U.S. Comm'n on Civil Rights, *Voting Irregularities in Florida During the 2000 Presidential Election: Chapter 2, First-Hand Accounts of Voter Disenfranchisement* (June 2001), <https://www.usccr.gov/files/pubs/vote2000/report/ch2.htm> ; Julian Borger, *US inquiry into claims black voters were stripped of rights*, THE GUARDIAN (Dec. 4, 2000), <https://www.theguardian.com/world/2000/dec/04/uselections2000.usa1>.

²² Chuck Tanner, “Constitutional Sheriffs” and the “Election Fraud” Conspiracy Posse, INSTITUTE FOR RESEARCH AND EDUCATION ON HUMAN RIGHTS (2022), <https://www.irehr.org/2022/06/14/constitutional-sheriffs-and-the-election-fraud-conspiracy-posse/>.

²³ *Barry Co. sheriff, others could face charges for taking tabulators*, WOODTV.COM (Aug. 7, 2022 8:22 pm), <https://www.woodtv.com/news/barry-county/report-barry-co-sheriff-others-could-face-charges-for-taking-tabulators/>.

²⁴ Henry Redman, *Racine Co. Sheriff refers criminal charges against five elections commissioners*, WISCONSIN EXAMINER (Nov. 3, 2021, 4:36 pm), <https://wisconsinexaminer.com/brief/racine-co-sheriff-refers-criminal-election-fraud/>.

²⁵ Rob Mentzer, *Racine County District Attorney won't charge nursing home workers, Wisconsin Elections Commission members*, WISCONSIN PUB. RADIO (Feb. 11, 2022 10:45 am), wpr.org/racine-county-district-attorney-wont-charge-nursing-home-workers-wisconsin-elections-commission.

²⁶ See e.g. Edward Walsh, *NC Baptist: On book bans, Moms for Liberty sure has a narrow view of liberty*, CHARLOTTE OBSERVER (Nov. 28, 2022 8:45 pm), <https://www.charlotteobserver.com/opinion/article269302717.html> (Among the books Moms for Liberty chapters in North Carolina seek to ban are “Gender Queer” and essays regarding growing up Black and queer in “All Boys Aren’t Blue.”).

certain books to which the group had objected.²⁷ The Indian River County Sheriff, Eric Flowers—an inaugural member of the Claremont Institute’s Sheriff Fellowship—assigned a sergeant to investigate.²⁸ While Sheriff Flowers ultimately concluded that no crime occurred, such investigations have a chilling effect on critical conversations about identity, racism, sexism, and overcoming barriers to equality.²⁹ CCDF lodged complaints about books its members deemed to be “obscene, pornographic or age inappropriate” with multiple law enforcement agencies throughout Polk County, Florida after they failed to get books removed from public school libraries.³⁰ Sheriff Grady Judd indicated a complaint from CCDF was “under review” to determine whether a criminal investigation would be launched.³¹ In 2021, Moms for Liberty had 70,000 members in 165 chapters across 33 states.³² Unless the Department takes steps to mitigate the use of sheriffs to prohibit the teaching of accurate history and current events, this type of activity will continue and is likely to grow.

IV. The Department Must Take Measures to Mitigate these Threats

The Department must take definitive steps to counteract the threats posed by self-styled constitutional sheriffs. First, the Department should publish guidance clearly and explicitly rejecting the position that sheriffs hold a special place in our constitutional order granting them supremacy over all other authorities to decide a law’s constitutionality within their county. The guidance should make clear that sheriffs are no different than, and are subject to the same laws and limitations as any other law enforcement official, including laws prohibiting voter intimidation. The guidance should include parameters from the Civil Rights Division on current practices by constitutional sheriffs that may violate federal law, including civil rights protected under federal statutes enforced by its Voting, Educational Opportunities, Special Litigation, and Federal Coordination and Compliance Sections. For example, actions by sheriffs that may constitute voter intimidation or cause election interference should be identified as such. Likewise, where sheriffs’ criminal investigations in response to complaints regarding books discussing racism, sexism, or LGBTQ identities may violate laws enforced by the Educational Opportunities, guidance should be provided to sheriffs on when these investigations may violate federal laws. Where sheriffs’ enforcement and non-enforcement decisions have a disparate impact on people based on protected categories, the Special Litigation Section should provide guidance on when enforcement and non-enforcement decisions may violate laws the section enforces. And the Federal Coordination and Compliance Section should provide guidance on sheriffs’ activities that would make them ineligible for federal funding.

Second, the Department’s Civil Rights Division should use its multiple levers to mitigate the threats posed by constitutional sheriffs. It should convene an intra-Division working group to

²⁷ Jessica Pishko, *Angry Right-Wing Moms Are Trying to Have Librarians Arrested by “Constitutional Sheriffs,”* SLATE (Nov. 4, 2022), <https://slate.com/news-and-politics/2022/11/ron-desantis-moms-for-liberty-florida-book-bans.html>.

²⁸ *See id.*

²⁹ *See id.*

³⁰ Kimberly C. Moore, CCDF Takes Its Complaints About 16 School Library Books to Police Departments, *lkldnow* (Aug. 29, 2022), <https://www.lkldnow.com/ccdf-takes-its-complaints-about-16-school-library-books-to-city-police-departments/>.

³¹ *See id.*

³² Zac Anderson, What is Moms for Liberty? Here's a look at its roots, its philosophy and its mission, *TCPalm* (Dec. 8, 2021 6:28 am), <https://www.tcpalm.com/story/news/2021/12/08/moms-liberty-florida-chapters-members-details/6355142001/>.

assess whether individual sheriffs' actions violate federal laws enforced by the Division's sections, including, at a minimum, the Voting, Educational Opportunities, Special Litigation, and Federal Coordination and Compliance Sections. In implementing its new Title VI protocols, the Division should solicit information during the application process from law enforcement agencies for grants to ensure recipients have not engaged in activities that deprive people of their civil or constitutional rights, such as through practices promoted by the constitutional sheriffs movement and affiliated organizations. The Department should ensure that federal funding is not used for trainings by groups that promote the false ideas of "constitutional sheriffs."

Third, the Department should exercise its convening power and influence with law enforcement associations to urge law enforcement groups to reject the ideas and practices promoted by the constitutional sheriffs movement and affiliated organizations that threaten to undermine the ability of Black and Brown communities to participate in core functions of a multiracial democracy, including voting and education.

Fourth, the Department should use the levers within the President's May 25, 2022 Executive Order 14074 ("Order") to mitigate the anti-governmental practices of sheriffs. Through Section 19 of the Order, "Establishing Accreditation Standards," the Attorney General should require that accrediting bodies have strong mandates to reject sheriffs whose activities threaten the civil or constitutional rights of members of the public. The Department's standards should ensure that training from CSPOA and related groups does not qualify for educational credits for accreditation. Given the Civil Rights Division's familiarity with law enforcement agencies that systematically violate people's rights, it should lead the Department's development of standards for accrediting bodies, informed by its Special Litigation Section.

Section 3(iv)(c) of the Order requires that background investigation practices and selection procedures developed to "help avoid the hiring and retention of law enforcement officers who promote unlawful violence, white supremacy, or other bias against persons" be incorporated into protocols developed by federal law enforcement agencies for local and state law enforcement participation in federal programs such as joint task forces.³³ Sheriff Mark Lamb advertises his participation in a federal RICO case on his official webpage.³⁴ Federal law enforcement agencies should ensure that only law enforcement personnel that are held to the highest standards and prioritize the protection of people's civil rights participate in federal task forces and federal training.

Finally, the Department should address the threat of constitutional sheriffs and recruitment of law enforcement by white nationalist groups discussed in our September 13, 2022 letter to the Attorney General through interagency policy committees mentioned above or developed following the administration's United We Stand summit. If these current interagency policy committees are not well-positioned to address the threats posed by constitutional sheriffs, the Department should urge the White House to form a new interagency policy committee, composed of all federal agencies that partner with, or provide funding to, local law enforcement officials

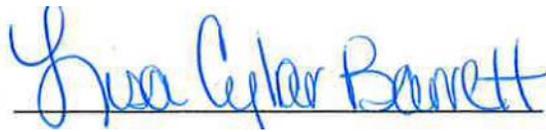
³³ Exec. Order No. 14704, Executive Order on Advancing Effective, Accountable Policing and Criminal Justice Practices to Enhance Public Trust and Public Safety, Sec. 3 (May 25, 2022), <https://www.whitehouse.gov/briefing-room/presidential-actions/2022/05/25/executive-order-on-advancing-effective-accountable-policing-and-criminal-justice-practices-to-enhance-public-trust-and-public-safety/>.

³⁴ About Sheriff Mark Lamb, Pinal County, Ariz. Gov't., <https://www.pinalcountyz.gov/sheriff/aboutpcso/pages/sheriff.aspx> (last visited Dec. 8, 2022).

through programs such as trainings and grants. The committee should also include federal agencies such as the Department of Education that promote standards for access to education to guard against the manipulation of law enforcement by groups working to prohibit the accurate teaching of structural racism and sexism and to deny LGBTQ identities.

We appreciate your attention to this important and urgent matter and would welcome an opportunity to discuss this matter with you. Should you have any questions in the meantime, please do not hesitate to reach out to Puneet Cheema, LDF's Manager of the Justice in Public Safety Project at pcheema@naacpldf.org, Jin Hee Lee, Director of Strategic Initiatives at jlee@naacpldf.org, or me at lcylarbarrett@naacpldf.org.

Sincerely,



Lisa Cylar Barrett
Director of Policy and Director of the Washington
D.C. Office
NAACP Legal Defense and Educational Fund, Inc.

cc: The Honorable Secretary of Homeland Security, Alejandro Mayorkas
Deputy Assistant to the President, Chiraag Bains