

May 2, 2024

The Honorable Merrick Garland
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-00

The Honorable Miguel Cardona
U.S. Department of Education
400 Maryland Avenue, SW
Washington, DC 20202

RE: Investigating Law Enforcement Responses to Peaceful Campus Protests

Dear Attorney General Garland and Secretary Cardona:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF), we write to urge the Department of Justice (DOJ) to investigate the allegations of law enforcement abuses, in response to peaceful protests¹ occurring on university campuses across the country, that may be in violation of federal laws. We likewise urge the Department of Education (DOE) to take immediate action to address possible civil rights violations committed by university officials in connection with these same events. Nonviolent protests are part of a longstanding tradition of student activism to express outrage for civil rights and human rights violations and to push university officials and government actors to adhere to the ideals and principles of our multiracial democracy. The current peaceful protests are similar, as students, faculty, and other stakeholders express their condemnation of the extreme and escalating violence in Gaza, and all acts of anti-Arab, anti-Muslim, and antisemitic hate and bias.

In recent weeks, hundreds of campus protesters have been arrested and detained—sometimes with egregious use of force—by officers from university, state, and local police departments whom university administrators have called to break up peaceful protests. Law enforcement’s deployment of militarized tactics on crowds of campus protesters and inappropriate uses of force to disband protesters require immediate action from DOJ and DOE to ensure that the federal and constitutional rights of campus protesters have been and remain protected. We recognize that both university officials and law enforcement agencies, who are both charged to protect campus protesters, are navigating potentially volatile situations. Nonetheless, the civil and human rights of protesters cannot be transgressed.

I. DOJ Should Evaluate Law Enforcement Responses to Peaceful Campus Protests for Violations of Federal Laws, Particularly in New York City, Austin, and Atlanta

On April 18, 2024, Columbia University President Minouche Shafik enlisted the New York City Police Department (NYPD) to remove campus protesters from a peaceful encampment. The officers that participated in this action included members of its notorious

¹ Peaceful protests are nonviolent protests via expressive conduct, including acts of civil disobedience. LDF condemns violence of all kinds and supports constructive nonviolent solutions to public safety.

Strategic Response Group (“SRG”)² which is already the subject of a settlement agreement with the New York Attorney General for its abusive conduct during the racial justice protests in 2020.³ SRG officers have repeatedly used excessive force, arrests, and dangerous tactical strategies, such as kettling, against demonstrators as they exercise their First Amendment rights.⁴ NYPD officers arrested more than 100 people at Columbia on April 18 and 120 people at New York University on April 22.⁵ During NYPD’s response at NYU, a legal observer and journalist reported being pepper-sprayed.⁶ On April 30, hundreds of NYPD officers in full riot gear arrested 282 people—173 at City College and 109 at Columbia.⁷

Universities across the country have followed Columbia’s example and turned to state and local law enforcement to force the removal of hundreds of students, faculty, and others engaged in peaceful, pro-Palestinian protests on campus grounds.

At the University of Texas at Austin, Governor Abbott militarized the campus by deploying Texas State Troopers from the State’s Department of Public Safety, alongside officers from the University of Texas Police Department and Austin Police Department, to respond to the peaceful, student-organized rally on April 24.⁸ Outfitted in riot gear, officers arrived in vehicles, on motorcycles, on foot, and on horseback.⁹ Protest observers reported that officers quickly became aggressive towards campus protesters, pushing through the crowd and grabbing individuals to detain them.¹⁰ According to reports, the first person arrested at this protest actually attempted to facilitate the dispersal of others at the officers’ orders, when law enforcement officers pushed him into another officer, who subsequently arrested him.¹¹ Law

² Allie Griffin, *NYPD arrests over 100 protesters at NYU, clears out anti-Israel encampment on campus*, N.Y. POST (Apr. 22, 2024), <https://nypost.com/2024/04/22/us-news/nypd-cops-in-riot-gear-arrest-dozens-of-nyu-students-faculty-at-anti-israel-encampment-on-campus/>.

³ Press Release, Office of the New York State Attorney General, Attorney General James, The Legal Aid Society, and NYCLU Announce Agreement with NYPD to Reform Policing of Protests (Sept. 5, 2023), <https://ag.ny.gov/press-release/2023/attorney-general-james-legal-aid-society-and-nyclu-announce-agreement-nypd>.

⁴ Ali Watkins, *An Unprepared N.Y.P.D. Badly Mishandled Floyd Protests, Watchdog Says*, N.Y. TIMES (Dec. 18, 2020), <https://www.nytimes.com/2020/12/18/nyregion/nypd-george-floyd-protests.html>.

⁵ *Where campus protests have led to arrests across the U.S.*, WASH. POST (Apr. 29, 2024), <https://www.washingtonpost.com/education/2024/04/25/university-protests-arrests-locations/>.

⁶ Noah Hurowitz, *NYU Has NYPD Arrest and Pepper-Spray Protesters at Pro-Palestine Student Encampment*, HELLGATE NYC (Apr. 23, 2024), <https://hellgatenyc.com/nyu-nypd-gaza-solidarity-encampment>.

⁷ *Mayor Eric Adams defends NYPD’s actions to arrest protesters in NYC* (May 1, 2024), <https://abc7ny.com/columbia-protests-mayor-eric-adams-defends-nypds-actions-to-arrest-pro-palestinian-demonstrators-in-nyc/14751040/>

⁸ Stephen Simpson, *Campuses across Texas had pro-Palestinian demonstrations. Why did only UT-Austin crack down?*, TEX. TRIB. (Apr. 26, 2024), <https://www.texastribune.org/2024/04/26/ut-austin-student-protest-arrests-texas/>; TX. Tribune <https://www.texastribune.org/2024/04/26/ut-austin-student-protest-arrests-texas/>.

⁹ *Id.*

¹⁰ Lily Kepner & Skye Seipp, *What happened at pro-Palestinian protest at UT-Austin? Here’s the timeline of events*, AUSTIN AM.-STATESMAN (APR. 25, 2024), <https://www.statesman.com/story/news/local/2024/04/25/pro-palestine-protest-ut-austin-student-protests-arrest-timeline-of-events/73448241007/>.

¹¹ Bayliss Wagner, Chase Rogers, & Ella McCarthy, *Family, supporters of arrested UT-Austin pro-Palestine protesters waited hours outside jail*, AUSTIN AM.-STATESMAN (Apr. 26, 2024), <https://www.statesman.com/story/news/politics/state/2024/04/25/pro-palestine-protest-ut-austin-arrest-families-supporters-wait-hours-for-release/73451194007/>.

enforcement officers eventually arrested 57 campus protesters on misdemeanor criminal trespass charges, filling out probable cause affidavits for each individual arrested.¹² Charges have been dropped in all cases based on deficiencies with those probable cause affidavits that had been used to justify each arrest.¹³ In fact, a review of a handful of these affidavits revealed that officers appeared to have copied and pasted language from one affidavit to the next.¹⁴

In Atlanta, Georgia State Troopers and Motor Carrier Officers responded to a request for assistance by the Emory Police Department and Atlanta Police Department (APD) to remove campus demonstrators from a peaceful protest at Emory University on April 25, 2024.¹⁵ Students reported witnessing Georgia State Troopers enclose on the encampment, deploying tear gas, rubber bullets, and pepper balls into the crowd¹⁶ and pinning and tackling protesters to the ground before restraining their hands behind their backs with zip ties or handcuffs.¹⁷ Video footage shows two white state troopers and one Black APD officer pinning a protester—a Black male—to the ground, with one state trooper repeatedly tasing the individual while the APD officer turned him on his stomach to handcuff him.¹⁸ Even after this protester was handcuffed, the state trooper continued to tase him.¹⁹

The examples cited above are by no means a complete accounting of inappropriate or potentially unlawful law enforcement conduct. Additional examples abound. For example, in Arizona, the Council on American Islamic Relations reported that Arizona State University officers forcibly removed the hijabs of Muslim women who were arrested.²⁰ In Missouri, a professor from Southern Illinois University Edwardsville was arrested at Washington University in St. Louis, and is hospitalized with broken ribs and a broken hand due to force used by law enforcement during and following the arrest.²¹ The Department of Justice should thoroughly

¹² Simpson, *supra* note 6; Skye Seipp, *Charges dropped against all 57 arrested in connection to UT-Austin pro-Palestinian protest*, AUSTIN AM.-STATESMAN (Apr. 26, 2024), <https://www.statesman.com/story/news/local/2024/04/26/ut-austin-pro-palestinian-protest-charges-dropped-against-all-57-people-arrested/73468467007/>.

¹³ Simpson, *supra* note 6.

¹⁴ *Id.*

¹⁵ Press Release, Georgia Department of Public Safety, *DPS Responds to Emory University* (Apr. 25, 2024), <https://dps.georgia.gov/press-releases/2024-04-25/dps-responds-emory-university>.

¹⁶ Martha Dalton, *Legal groups say repercussions for protesters are worse in Georgia*, ATLANTA J.-CONST. (Apr. 29, 2024), <https://www.ajc.com/education/legal-groups-say-repercussions-for-protesters-are-worse-in-georgia/XUMSPWSEQZH4ZFN2Y2CHERCDCU/>; *At least 28 arrested after protesters set up encampments on Emory University campus*, WSB-TV ATLANTA (Apr. 26, 2024), <https://www.wsbtv.com/news/local/protesters-leave-emory-universitys-campus-after-police-use-tear-gas-dozens-arrested/HIHQGIUSRRCVTNAE6ZMKIESUFM/>; Amanda Yen, *Arrests Get Violent as Cops Deploy Tasers and Tear Gas on Campus Protesters*, DAILY BEAST (Apr. 25, 2024), <https://www.thedailybeast.com/arrests-get-violent-as-cops-deploy-tasers-and-tear-gas-on-campus-protesters>.

¹⁷ @BillyHeathFOX5, X (Apr. 25, 2024, 3:43 PM), <https://twitter.com/BillyHeathFOX5/status/1783582734348104178>.

¹⁸ *Protester shot with Taser during Emory protest*, FOX 5 ATLANTA (Apr. 25, 2024), <https://www.fox5atlanta.com/video/1446610>.

¹⁹ *Id.*

²⁰ Matthew Impelli, *Outrage as Arizona Police Accused of Removing Student Protester's Hijab*, Newsweek (April 30, 2024), <https://www.newsweek.com/pro-palestinian-protest-arizona-state-university-hijab-police-outrage-1895742>.

²¹ Rachel Treisman, *Faculty are attending — and getting arrested at — protests*, NPR (May 1, 2024), <https://www.npr.org/2024/05/01/1248099600/campus-protests-faculty-arrests-letters-no-confidence-votes>.

and comprehensively review law enforcement conduct in response to peaceful campus protests nationwide to determine whether federal laws have been violated.

II. Recommendations

Throughout history, acts of peaceful and nonviolent protest by concerned individuals have been a critical tool to call attention to civil and human rights violations and to advance racial and social justice. From the Civil Rights Movement of the 1960s to the demonstrations proliferating on campuses today, collective, organized advocacy for racial and social justice issues have consistently been met with racialized police violence. While this may have been the unfortunate response to past and present-day peaceful protests, it should not be tolerated by this Administration. It is, therefore, incumbent upon both DOJ and DOE to take immediate action to hold individuals and law enforcement agencies accountable for violation of protesters' rights and ensure such violations do not recur.

Accordingly, we urge DOJ to take the following steps to prevent and respond to the increasingly abusive and militarized responses by law enforcement against peaceful campus protesters:

- Review the conduct of law enforcement agencies involved in responses to peaceful campus protests nationwide to determine whether to initiate a pattern and practice investigation under 34 U.S.C. § 12601;
- Immediately initiate investigations under 34 U.S.C. § 12601 of NYPD's SRG unit, Georgia State Patrol, the Atlanta Police Department, Texas Highway Patrol (State Troopers), and the University of Texas Police Department to determine whether each department's conduct in their policing of campus protesters systematically violated federal law. These investigations should review whether the uses of force, including use of less than lethal weapons, crowd management tactics employed against protesters and bystanders, and arrests of protesters and bystanders constitute a pattern or practice of unlawful conduct under the First, Fourth, and Fourteenth Amendments of the U.S. Constitution, Title VI of the Civil Rights Act of 1964, and/or the Safe Streets Act of 1968.
- Offer Community Relations Services (CRS) to mediate tensions between campus protesters and school administrators to prevent future calls for law enforcement to respond to peaceful campus protests. Law enforcement involvement in protests may escalate a situation where de-escalation is far more necessary, especially in peaceful protests involving issues of social and racial justice. A recent study found that when police were present at a protest, they were eight times more likely to use projectiles and chemical weapons at racial justice protests than non-racial justice protests.²²

²² Sandhya Kajeepeeta & Daniel K.N. Johnson, *Police and Protests: The Inequality of Police Response to Racial Justice Demonstrations*, THURGOOD MARSHALL INST., LEGAL DEF. FUND (Nov. 2023), <https://tminstituteldf.org/police-and-protests-the-inequity-of-police-responses-to-racial-justices-demonstrations/#::~:~:text=Police%20used%20projectiles%20and%20chemical,to%20non%2Dracial%20justice%20protests.>

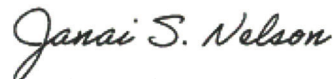
- Investigate potential law enforcement violations of other applicable civil rights statutes.

In addition to direct action from DOJ, we urge DOE to take the following steps to safeguard students' constitutional and civil rights and ensure federally-funded institutions' compliance with anti-discrimination laws, including Title VI of the Civil Rights Act of 1964, which strictly prohibits the use of federal funds for discrimination based on race, color, or national origin:

- Dedicate resources in DOE's Office of Civil Rights to investigate pending Title VI complaints alleging discrimination on the basis of race, color, or national origin against universities regarding peaceful protest activities on campuses.
- Issue guidance to university administrators outlining the importance of First Amendment rights on college and university campuses and the protection of protesters' rights, including any rights that are relevant during law enforcement encounters. This guidance should include a directive that students not be punished (e.g., suspended) for engaging in constitutionally protected activity. An arrest for engaging in constitutionally protected activity should not be used to justify administrative punishment for students given the history of law enforcement abuses in response to peaceful protests.

It is imperative that individuals engaged in nonviolent campus protests continue to express their opinions on matters of utmost public importance. We thank you for your consideration of these urgent issues as many young people across the country participate in the type of peaceful civic engagement that is illustrative of a healthy and robust democracy. Please contact Puneet Cheema, Manager of LDF's Justice in Public Safety Project, at pcheema@naacpldf.org if you have any questions regarding this matter.

Respectfully,



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