July 27, 2020

Via Electronic Mail

Chairman Lindsey Graham
Ranking Member Dianne Feinstein
Senate Committee on the Judiciary
226 Dirksen Senate Office Building
Washington, D.C. 20510

Chairman Ron Johnson
Ranking Member Gary Peters
Senate Committee on Homeland Security and Governmental Affairs
340 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairmen Graham and Johnson and Ranking Members Feinstein and Peters:

On behalf of the American Civil Liberties Union (ACLU), The Leadership Conference on Civil and Human Rights (The Leadership Conference), and NAACP Legal Defense and Educational Fund, Inc. (NAACP LDF), we write to unequivocally condemn the actions of federal agents who have descended upon protesters in Washington, D.C.\(^1\) and Portland, Oregon\(^2\) to quell their constitutional right to free speech and assembly. Equally troubling is the questionable authority President Donald Trump claims to deploy these federal agents and lack of accountability for the agents’ conduct. As demonstrated by the horrific disregard for public safety when protestors were cleared from Lafayette Square, Washington, D.C. on June 1, 2020, federal agents from a myriad of federal agencies have, on at least one occasion, been specifically ordered to use tear gas, rubber bullets, and physical force against protestors.\(^3\) In Portland, federal agents from the Departments of Justice (DOJ) and Homeland Security (DHS) reportedly have violently, and


without provocation, used tear gas and impact munitions against protestors, leaving at least one protester seriously injured and whisking other protestors off the streets into unmarked cars under no stated premise for arrest.\(^4\) Last week, President Trump announced the further deployment of federal law enforcement to more American cities to ostensibly fight violent crime.\(^5\) This will inevitably lead to continued police violence.

We support the recent successful request of House members to the Inspectors General of DHS and DOJ to conduct an investigation of their federal agents in Portland, Washington D.C., and other cities,\(^6\) and we urge you to go further by holding public hearings before Congress adjourns for the August recess, securing witnesses and records from relevant agencies for the hearings, and using your subpoena power where there is noncompliance. If necessary, we strongly urge you to delay the August recess for a week to schedule these crucial public hearings. Immediate hearings are necessary to prevent more individuals from being needlessly persecuted by unjust federal agent and law enforcement activities.

For the past several months, our nation has witnessed yet another series of incidents of seemingly unjustified violence against Black and Brown residents at the hands of current and former law enforcement officers. These incidents include, but are not limited to, the police killings of Ahmaud Arbery in Satilla Shores, Georgia; Carlos Ingram-Lopez in Tucson, Arizona; Breonna Taylor in Louisville, Kentucky; George Floyd in Minneapolis, Minnesota; Tony McDade in Tallahassee, Florida; and Rayshard Brooks in Atlanta, Georgia. In response to these needless killings, residents of all races, ages, and genders have taken to public places and forums to protest police violence and demand police accountability, transparency, and a new public safety regime that does not rely on law enforcement. We stand by the fundamental prerogative of the people to debate and appeal for change from government officials by way of speech, assembly, and protest. Indeed, protest against police violence must not be responded to with police violence. However, as we have seen, federal agents under questionable mandate, dressed in military-grade uniforms, and equipped with military-grade weapons, have been deployed to American cities in an attempt to impose “law and order.”\(^7\)

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\(^7\) Donald Trump (@realdonaldtrump), Twitter (July 14, 2020, 12:18 AM) https://twitter.com/realdonaldtrump/status/1282892191082385408; David Nakamura and Peter Hermann, After announcing modest police reforms, Trump pivots quickly to a law and order message in appeal to his base, WASH. POST (June 26, 2020), https://www.washingtonpost.com/politics/after-announcing-modest-police-reforms-trump-
In recent days, video and news reports from Portland show federal agents covering their faces with gas masks, goggles, or scarves and wearing neither badge, insignia, nor marker to identify themselves as officers. These images evoke an authoritarian state rather than the foremost democracy and free society in the world. Worse still, reports now show that DHS officers are collecting information about and surveilling Americans who engage in protest who they unfoundedly claim to be a threat to federal property, monuments, and statues.

President Trump, along with Attorney General William Barr, have called protesters who exercise their constitutional right to free speech and assembly “terrorists” and have advised state governors to “dominate” and “take control of the streets.” Indeed, President Trump, Attorney General Barr, and Acting Homeland Security Secretary Chad Wolf seem to now be fulfilling their promise, to impose federal law where they will escalate, rather than deescalate, any tensions and likely lead to the continued breach and abuse of police power. Congress must act now to prevent more federal law enforcement officers from being deployed to retaliate against individuals who choose to exercise their constitutional rights to protest.

The urgent need for a public investigation of federal agency activities is underscored by the Trump Administration’s recent expansion of DOJ grant programs, such as Operation Legend.

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8 Kyle Iboishi, Who are these federal officers sent to Portland to deal with protesters?, KGW8 (July 13, 2020), https://www.kgw.com/article/news/investigations/who-are-these-federal-officers-sent-to-portland-to-deal-with-protesters/283-b2c3b375-cdf6a-4e8a-b2c3-25cbb911335.


10 Katie Rogers, Jonathan Martin, and Maggie Haberman, As Trump Calls Protesters ‘Terrorists,’ Tear Gas Clears a Path for His Walk to a Church, N.Y. TIMES (June 1, 2020), https://www.nytimes.com/2020/06/01/us/politics/trump-governors.html.


to ostensibly assist localities with fighting violent crime by sending federal agents to cities around the country, including Chicago and Albuquerque,\(^{15}\) where sustained demonstrations protesting police violence have occurred. Mayor Tim Keller of Albuquerque responded to the DOJ’s announcement declaring that “…we won’t sell out our city for a bait and switch excuse to send secret police to Albuquerque.”\(^{16}\) Additionally, mayors in other cities where the Trump Administration threatens to deploy federal agents, such as Baltimore and Philadelphia, have also demanded that these law enforcement agents stay out of their cities.\(^{17}\) These mayors have significant cause for concern about federal troops coming to their city. And yet, President Trump and other federal officials have moved forward with surging federal officers from DOJ and DHS.

While federal intervention is sometimes necessary to protect and advance the civil rights of American residents (i.e. investigate police misconduct), the Trump Administration’s deployment of federal personnel to respond to protest has resulted in the violation of individuals’ civil rights. Indeed, a federal judge has ordered federal agents to be removed temporarily from Portland.\(^{18}\) Also, the expansion of the federal law enforcement footprint is incongruent with the calls for police accountability that so many communities across this country have demanded over these past months and which have been endorsed by many members of Congress.\(^{19}\) If unchecked, the Administration’s militarized policing strategies will inevitably lead to the use of excessive force, criminalization, over-policing of Black and Brown communities, and police violence.\(^{20}\) Immediate Congressional oversight is necessary in this moment.

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\(^{20}\) Letter from Civil Rights Corps, et, al., to Chairwoman Carolyn B. Maloney, Chairwoman Nita M. Lowey, Ranking Member James Comer, and Ranking Member Kay Granger, United States House of Representatives, Committee on
As a co-equal branch of the federal government, it is the constitutional responsibility of the Congress to conduct oversight of the Executive Branch. No more important is this role than when the President has acted and continues to act with complete disregard and impunity to the constitutional rights of people who assemble and protest police violence. Where, as here, President Trump and members of the Executive Branch have failed to exercise police power with transparency, and indeed, contrary to constitutional principles and common decency, it is the duty of the Congress to investigate this use of power and take action to hold the Administration accountable.

Therefore, we call on your respective congressional committees to act with haste and exercise the full power of their oversight authorities to secure witnesses and documents, demand compliance with your requests and hold public hearings to more deeply examine the President’s order to deploy federal agents to American cities to suppress activities protected by the First Amendment and terrorize communities. Akin to the House members’ request to the Inspectors General of DOJ and DHS, a probe of these agencies’ conduct should include: a review of the legal authority upon which the Trump Administration is deploying federal agents to the locations of public demonstrations; the public safety goal this deployment seeks to advance; the extent to which the Administration is cooperating with state and local authorities; and the number of and reasons for arrests and uses of force by federal agents, among other data. Additionally, public hearings must be held to determine which officials have been commanding federal agents and the implication of federal agent action on activities protected by the U.S. Constitution and federal law. These hearings need to be held now, to prevent the imminent oppression and terror from federal agents in cities like Albuquerque and Chicago.

Thank you for considering this request. We look forward to your response. Please do not hesitate to contact Monique Dixon, Deputy Director of Policy/Director of State Advocacy of NAACP LDF, at mdixon@naacpldf.org, Sakira Cook, Director, Justice Reform Program of The Leadership Conference, at cook@civilrights.org, and Kanya Bennett, Senior Legislative Counsel of ACLU, at kbennett@aclu.org, or Kate Ruane, Senior Legislative Counsel of ACLU, at kruane@aclu.org, with any questions or concerns.

Sincerely,

NAACP Legal Defense and Educational Fund, Inc.
The Leadership Conference on Civil and Human Rights
American Civil Liberties Union

cc: The Honorable Mitch McConnell, Senate Majority Leader