



July 27, 2020

Via Electronic Mail

Chairman Jerrold Nadler
Ranking Member Jim Jordan
House Committee on the Judiciary
2138 Rayburn House Office Building
Washington, D.C. 20515

Chairman Bennie G. Thompson
Ranking Member Mike Rogers
House Committee on Homeland Security
H2-176 Ford House Office Building
Washington, D.C. 20515

Chairwoman Carolyn B. Maloney
Ranking Member James Comer
House Committee on Oversight and Reform
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairpersons Nadler, Thompson, and Maloney and Ranking Members Jordan, Rogers, and Comer:

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, Oregon² 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

¹ Philip Rucker and Ashley Parker, Lafayette Square clash, still reverberating, becomes an iconic episode in Donald Trump's presidency, WASH. POST. (June 13, 2020), https://www.washingtonpost.com/politics/lafayette-square-clash-still-reverberating-becomes-an-iconic-episode-in-donald-trumps-presidency/2020/06/13/9ddcc348-acb8-11ea-9063-e69bd6520940_story.html.

² Jonathan Levinson and Conrad Wilson, Federal Law Enforcement Use Unmarked Vehicles To Grab Protesters Off Portland Streets, OPB (July 16, 2020), <https://www.opb.org/news/article/federal-law-enforcement-unmarked-vehicles-portland-protesters/#.XxGckadEc1t.mailto>.

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 law enforcement 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.

While we are encouraged by Chairpersons Nadler's, Thompson's and Maloney's successful request 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 we urge you to go further and hold public hearings before Congress adjourns for the August recess, secure witnesses and records from relevant agencies for the hearings, and use 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. During tomorrow's House Judiciary Committee oversight hearing of the DOJ, we strongly urge you to ask questions about and request documents relating to the activities of federal agents in Portland, D.C., and other cities.

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

³ Peter Baker, et. al., How Trump's Idea for a Photo Op Led to Havoc in a Park, N.Y. TIMES (June 2, 2020), <https://www.nytimes.com/2020/06/02/us/politics/trump-walk-lafayette-square.html>.

⁴ Ryan Nguyen, Police shoot Portland protester in head with impact weapon, causing severe injuries, THE OREGONIAN (July 12, 2020), <https://www.oregonlive.com/news/2020/07/police-shoot-portland-protester-in-head-with-impact-weapon-causing-severe-injuries.html>.

⁵ Weijia Jiang, Trump expands use of federal agents as mayors push back, CBS NEWS (July 22, 2020), <https://www.cbsnews.com/news/trump-operation-legend-to-send-federal-agents-to-chicago-albuquerque/>.

⁶ See Letter from Chairman Jerold Nadler, *et al*, to Michael E. Horowitz, Inspector General, Department of Justice and Joseph V. Cuffari, Inspector General, Department of Homeland Security (July 19, 2020), <https://judiciary.house.gov/news/documentsingle.aspx?DocumentID=3137>. See also Delvin Barrett, Inspectors general to examine law enforcement actions at Portland, D.C. protests, WASH. POST (July 23, 2020), https://www.washingtonpost.com/national-security/inspector-general-investigates-portland-protests-lafayette-square/2020/07/23/4ed70812-cd15-11ea-bc6a-6841b28d9093_story.html.

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

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 - whisking protestors off the streets into unmarked cars under no stated premise for arrest.⁸ 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.⁹

President Trump, along with Attorney General William Barr, have called protesters who exercise their constitutional right to free speech and assembly “terrorists”¹⁰ and have advised state governors to “dominate” and “take control of the streets.”¹¹ Indeed, President Trump, Attorney General Barr, and Acting Homeland Security Secretary Chad Wolf seem to now be fulfilling their promise,¹² 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.¹³ Congress must act now to prevent

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-pivots-quickly-to-a-law-and-order-message-in-appeal-to-his-base/2020/06/26/622c6688-b7b6-11ea-a8da-693df3d7674a_story.html.

⁸ Kyle Iboshi, Who are these federal officers sent to Portland to deal with protestors?, 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-cd6a-4e8a-b2c3-25cbbb911335>.

⁹ Steve Vladeck and Benjamin Wittes, DHS Authorizes Domestic Surveillance to Protect Statues and Monuments, LAWFARE (July 20, 2020), <https://www.lawfareblog.com/dhs-authorizes-domestic-surveillance-protect-statues-and-monuments>.

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>.

¹¹ CNN, READ: President Trump’s call with US governors over protests, CNN (June 1, 2020), <https://www.cnn.com/2020/06/01/politics/wh-governors-call-protests/index.html>.

¹² The Hill (@thehill), Twitter (July 20, 2020, 12:07 PM) <https://twitter.com/thehill/status/1285244981322690560?s=20>; David Jackson, Kevin Johnson, and Kristine Phillips, Donald Trump: Federal law officers in Chicago will work with the city on crime problem, USA TODAY (July 22, 2020), <https://www.usatoday.com/story/news/politics/2020/07/22/donald-trump-federal-law-officers-work-chicago-fight-crime/5487118002/>.

¹³ Josh Marshall, DHS Under Boss: We’re Taking This National, THE TALKING POINTS MEMO (July 18, 2020), <https://talkingpointsmemo.com/edblogger/dhs-under-boss-were-taking-this-national>.

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,¹⁴ 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 by 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

¹⁴ Press Release, Attorney General William P. Barr Joins President Donald J. Trump to Announce Expansion of Operation Legend (July 22, 2020), <https://www.justice.gov/opa/pr/attorney-general-william-p-barr-joins-president-donald-j-trump-announce-expansion-operation>. We also oppose the federal government's Operation Relentless Pursuit program. See, The Leadership Conference, et al, *Civil Rights Advocates Urge Congress to Block DOJ Police Funding Program 'Operation Relentless Pursuit'*, July 15, 2020, <https://civilrights.org/2020/07/15/civil-rights-advocates-urge-congress-to-block-doj-police-funding-program-operation-relentless-pursuit/>.

¹⁵ David Jackson, Kevin Johnson, and Kristine Phillips, Donald Trump: Federal law officers in Chicago will work with the city on crime problem, USA TODAY (July 22, 2020), <https://www.usatoday.com/story/news/politics/2020/07/22/donald-trump-federal-law-officers-work-chicago-fight-crime/5487118002/>; Jessica Anderson and Justin Fenton, President Trump says Baltimore will see influx of 'federal law enforcement' but doesn't say what that means, BALTIMORE SUN (July 21, 2020), <https://www.baltimoresun.com/news/crime/bs-md-ci-cr-federal-law-enforcement-20200720-4r73egxnurdjvjilfu773tenmi-story.html>; Gregory Pratt and Jeremy Gorner, Trump expected to send new federal force to Chicago this week to battle violence, but plan's full scope is a question mark, CHICAGO TRIBUNE (July 20, 2020), <https://www.chicagotribune.com/news/criminal-justice/ct-chicago-police-dhs-deployment-20200720-dftu5ychwbextg4ltarh5qnwma-story.html>.

¹⁶ Weijia Jiang, Trump expands use of federal agents as mayors push back, CBS NEWS (July 22, 2020), <https://www.cbsnews.com/news/trump-operation-legend-to-send-federal-agents-to-chicago-albuquerque/>

¹⁷ See Marilyn Mosby and Larry Krasner, Mr. President, stay out of our cities, WASH. POST, July 23, 2020, https://www.washingtonpost.com/opinions/mr-president-stay-out-of-our-cities/2020/07/23/f67a8512-cd1a-11ea-91f1-28aca4d833a0_story.html.

¹⁸ See Temporary Restraining Order Enjoining Federal Defendants, *Index Newspaper LLC d/b/a Portland Mercury, et al. v. City of Portland, et al.*, Case No.: 3:20-cv-1035-SI, Doc. 84 (D.OR July 23, 2020), <https://assets.documentcloud.org/documents/7001472/Oregon-TRO-Federal-2020-07-23.pdf> (enjoining federal agents from arresting and using physical force against journalist and legal observers unless they have probable cause to believe they are committing a crime).

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.

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. Similar to your 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 law enforcement officers 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 of the Justice Reform Program of The Leadership Conference, at cook@civilrights.org, and Kanya Bennett, Senior Legislative

¹⁹ Catie Edmondson, House Passes Sweeping Policing Bill Targeting Racial Bias and Use of Force, N.Y. TIMES (June 25, 2020), <https://www.nytimes.com/2020/06/25/us/politics/house-police-overhaul-bill.html>

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 Oversight and Reform Committee on Appropriations (July 14, 2020), <https://civilrights.org/resource/the-leadership-conference-and-civil-rights-corps-letter-on-operation-relentless-pursuit/>.

Counsel of ACLU at kbennett@aclu.org or Kate Ruane, Senior Legislative Counsel of the 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 Nancy Pelosi, Speaker of the United States House of Representatives