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Vanita Gupta

June 3, 2020

The Honorable William P. Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Barr:

On behalf of The Leadership Conference on Civil and Human Rights, a coalition of more than 220 national organizations committed to promoting and protecting the civil and human rights of all persons in the United States, and the XXX organizations listed below, we urge the U.S. Department of Justice (DOJ) to investigate the recent fatal police shooting of Breonna Taylor in Louisville, Kentucky. Specifically, we ask that DOJ: (1) determine whether the officers involved in the death of Breonna Taylor violated criminal civil rights laws; (2) pursue a pattern or practice investigation of the Louisville Metro Police Department (LMPD) for its recurrent use of excessive force, particularly when executing searches of persons of color; and (3) restore its decades-long commitment to addressing systemic police misconduct by law enforcement agencies nationally.

As Attorney General, you swore an oath to “support, protect, and defend the Constitution of the United States.” You have given us ample reason to doubt your willingness to fulfill that oath, most recently in your decision to order federal police and security officials to use tear gas on peaceful protestors exercising their First Amendment rights outside of the White House. However, in calling on you to enforce our nation’s federal civil rights statutes at such a critical moment, we join the rest of the country and the world in urging you to uphold your solemn obligation to do justice in Ms. Taylor’s case, as well as in all other cases seeking to support, protect, and defend the Constitution.

DOJ Must Carefully and Expeditiously Review the Evidence to Determine Whether the Officers Involved in Breonna Taylor’s Death Violated Federal Criminal Civil Rights Law

On March 13, 2020, 26-year old African-American emergency medical technician Breonna Taylor was shot and killed in her own home by police officers executing a no-knock drug warrant.¹ Just after midnight, three plainclothes officers from the LMPD SWAT Team forced

¹ See, e.g., Haines, E. (May 11, 2020). Family seeks answers in police shooting of Louisville woman in her apartment. *The Washington Post*.

<https://www.washingtonpost.com/nation/2020/05/11/family-seeks-answers-fatal-police-shooting-louisville-woman-her-apartment/>

their way — allegedly unannounced — into the apartment where Ms. Taylor lay asleep next to her boyfriend, Kenneth Walker.² As Mr. Walker allegedly took actions in self-defense, officers fired upwards of 20 shots, at least eight of which fatally struck Ms. Taylor.³ Mr. Walker’s confusion and distress can be heard on the 911 call as he tells the dispatcher “I don’t know what happened . . . someone kicked in the door and shot my girlfriend.”⁴ Subsequently, prosecutors charged Mr. Walker with attempted murder of a police officer, although those charges have since been dropped.⁵

Kentucky Governor Andy Beshear called on the state attorney general, local prosecutor, and regional federal prosecutor to review LMPD’s internal investigation report.⁶ As of May 20, LMPD had completed its investigation, and according to Louisville Mayor Greg Fischer, delivered its report to State Attorney General Daniel Cameron, the Federal Bureau of Investigation (FBI), and the U.S. Attorney’s Office.⁷ On May 21, Mayor Fischer announced that Louisville Police Chief Steve Conrad would retire at the end of June,⁸ and the FBI confirmed it would initiate an investigation to “collect all available facts and evidence” pertaining to the case.⁹

DOJ should carefully and expeditiously review the evidence to be collected in the course of the FBI’s investigation to determine whether the officers involved violated Ms. Taylor’s civil rights under 18 U.S.C. § 242, which makes it unlawful for any person acting under the color of law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States.¹⁰ Persons acting under the color of law include police officers and other law enforcement officials who are or appear to be functioning in their official capacities.¹¹ Ms. Taylor was not the subject of the warrant the officers were

² See, e.g., Burke, M. (May 15, 2020). Breonna Taylor police shooting: What we know about the Kentucky woman’s death. *NBCNews*. <https://www.nbcnews.com/news/us-news/breonna-taylor-police-shooting-what-we-know-about-kentucky-woman-n1207841>

³ Ibid.

⁴ Albert, V. (May 29, 2020). 911 call from Breonna Taylor’s shooting death released: “Somebody kicked in the door and shot my girlfriend.” *CBS News*. <https://www.cbsnews.com/news/breonna-taylor-kenneth-walker-911-call-police-shooting/>

⁵ Levenson, M. (May 22, 2020). Prosecutors Drop Charges Against Boyfriend of Breonna Taylor. *The New York Times* <https://www.nytimes.com/2020/05/22/us/Breonna-Taylor-Kenneth-Walker.html>

⁶ Bogel-Burroughs, N. (May 14, 2020). Months After Louisville Police Kill Woman in Her Home, Governor Calls for Review. *The New York Times*. <https://www.nytimes.com/2020/05/14/us/breonna-taylor-louisville-shooting.html>

⁷ LMPD investigation into Breonna Taylor’s death sent to attorney general, Mayor Fischer says. (May 20, 2020). *WDRB*. https://www.wdrb.com/news/lmpd-investigation-into-breonna-taylors-death-sent-to-attorney-general-mayor-fischer-says/article_d228e9ea-9ad1-11ea-b6b0-a73a072b6f51.html

⁸ Green, M., Riley, J., and Mills, C. (May 21, 2020). Louisville Police Chief Steve Conrad to retire in June in wake of controversial Breonna Taylor shooting. *WDRB*. https://www.wdrb.com/in-depth/louisville-police-chief-steve-conrad-to-retire-in-june-in-wake-of-controversial-breonna-taylor/article_b168c718-9b92-11ea-a1cc-4fda5c80c570.html

⁹ Gross, J. (May 21, 2020). F.B.I. to Investigate Shooting of Breonna Taylor by Louisville Police. *The New York Times*. <https://www.nytimes.com/2020/05/21/us/fbi-louisville-shooting.html>.

¹⁰ 18 U.S.C. § 242.

¹¹ U.S. Department of Justice, Deprivation of Rights Under Color of Law. <https://www.justice.gov/crt/deprivation-rights-under-color-law>.

executing.¹² In fact, the individuals named in the warrant did not reside at the apartment complex, and were detained that same night — along with the drugs that officers had been in search of — at a location approximately 10 miles away.¹³ A federal civil rights investigation into the death of Ms. Taylor is warranted because this case potentially involves excessive use of force or other police misconduct in violation of Ms. Taylor’s Fourth Amendment right against unreasonable seizure.

DOJ Must Initiate a Pattern or Practice Investigation of Louisville Metro Police Department

Pursuant to 34 U.S.C. § 12601 (previously codified at 42 U.S.C. § 14141), DOJ is authorized to investigate police departments for patterns or practices of systemic, unconstitutional policing.¹⁴ As detailed below, LMPD has a history of troubling incidents that suggest immediate DOJ intervention is necessary.

Breonna Taylor’s death is not the first time LMPD has militarized the use of a no-knock drug warrant,¹⁵ nor is it the first time that LMPD has deployed excessive force or conducted unreasonable searches. Two of the three officers involved in Ms. Taylor’s death reportedly had excessive force complaints filed

¹² Ibid.

¹³ Martinez, N. (May 12, 2020). Breonna Taylor shooting: Warrant says suspect used her apartment to hide drugs, *Wave3*. <https://www.wave3.com/2020/05/12/breonna-taylor-shooting-warrant-says-suspect-used-her-apartment-hide-drugs/>

¹⁴ U.S. Department of Justice, Civil Rights Division. (Jan. 2017). *The Civil Rights Division’s Pattern and Practice Police Reform Work: 1994-Present*.

¹⁵ No-knock warrants resulted in at least 81 civilian deaths nationally between 2010 and 2016. See, Sack, K. (Mar. 18, 2018). Door-Busting Drug Raids Leave a Trail of Blood, *The New York Times*. <https://www.nytimes.com/interactive/2017/03/18/us/forced-entry-warrant-drug-raid.html>. The use of high-risk no-knock warrants, including for suspected drug crimes, mimics the troubling discrimination in enforcement of the war on drugs itself. According to a 2014 report by the American Civil Liberties Union, the use of SWAT teams to execute search warrants has disproportionately targeted African American and Latino individuals. These minorities make up 42% and 12% of deployments, respectively, and account for a staggering 61% of the total number of individuals impacted by SWAT raids for drug cases. Notably, the report also found that SWAT teams were almost twice as likely to use force to enter a person’s home in drug investigations than in other cases. American Civil Liberties Union. (June 2014). *War Comes Home: The Excessive Militarization of American Policing*. <https://www.aclu.org/report/war-comes-home-excessive-militarization-american-police>. In the mid-1980s, only 30 percent of police departments had SWAT teams, conducting 3,000 raids annually. Today, that number has ballooned to well over 80 percent of police departments with SWAT teams and approximately 60,000 deployments each year, mostly for the purposes of conducting drug searches on people’s private property. See, *Oversight of Federal Programs for Equipping State and Local Law Enforcement Agencies: Hearing Before the United States Senate Committee on Homeland Security and Governmental Affairs*, 113th Cong. (2014). <https://www.govinfo.gov/content/pkg/CHRG-113shrg92902/pdf/CHRG-113shrg92902.pdf>.

against them previously,¹⁶ and the Department has a documented pattern of other violations in recent years. In October 2019, the LMPD's SWAT team held a young family at gunpoint while raiding a home on suspicion of marijuana.¹⁷ Six months earlier, the Department fired an officer over incidents involving his use of excessive force in 2016 to 2017, including one where he tased an African-American woman while she sat on her hands.¹⁸ The police-involved shooting of Louisville business owner David McAtee on May 30, 2020 represents just the latest failure of LMPD to safely police the community it serves. Following a nonadherence to LMPD body camera policies, the officers involved have been placed on administrative leave and LMPD Chief Conrad has been fired.¹⁹ While this is a step towards some measure of accountability, the reality is that it should not have taken a second death at the hands of police for LMPD Chief Conrad to be fired, rather than be allowed to resign, following Ms. Taylor's killing.

Further, LMPD has frequently been the subject of complaints regarding illegal searches. In 2012, a Jefferson District Court Judge dismissed criminal charges in a case she determined LMPD carried out a "prolonged, intrusive, and ultimately unreasonable search,"²⁰ and earlier this year the Jefferson County Circuit Court similarly dismissed at least three cases in which LMPD officers were found to have violated defendants' constitutional rights by conducting illegal searches.²¹

For these reasons, the Department of Justice must take action to ensure that the police department charged with protecting the residents of Louisville is not systematically violating their constitutional rights. It is clear that LMPD officers' use of excessive force and unreasonable searches in the documented instances are not merely one-off incidents, but an indicator of systemic problems within the police department. As such, a DOJ pattern or practice investigation is merited and critical for ensuring the constitutional rights of Louisville residents are protected.

¹⁶ Costello, D. and Duvall, T. (May 14, 2020). "Get your damn story straight": What we know about Louisville woman Breonna Taylor's Death, *USA Today*.

<https://www.usatoday.com/story/news/nation/2020/05/14/breonna-taylor-what-know-louisville-emt-killedpolice/5189743002/>

¹⁷ See, e.g., Riley, J. (Oct. 29, 2019). Lawsuit: Louisville family held at gunpoint after SWAT team errs in marijuana raid. *WDRB*. https://www.wdrb.com/in-depth/lawsuit-louisville-family-held-at-gunpoint-after-swat-teamerrs/article_7ab3983c-fa67-11e9-85fd-4b5d61f667e6.html

¹⁸ Riley, J. (Nov. 18, 2019). Body cam video shows Louisville police officer tasing woman sitting on her hands. *WDRB*. https://www.wdrb.com/in-depth/body-cam-video-shows-louisville-police-officer-tasing-woman-sitting-on-her-hands/article_0a0c28a6-07d7-11ea-b8c1-bb97ea33e145.html

¹⁹ Otts, C. (June 1, 2020). Louisville police chief fired after no body camera footage of shooting. https://www.wdrb.com/in-depth/louisville-police-chief-fired-after-no-body-camera-footage-of-shooting/article_faa2ba10-a443-11ea-9309-c39cfd65671a.html

²⁰ Riley, J. (Mar. 4, 2020). Man paid \$96,000 for illegal LMPD search in 2012 sues police again – for illegal search, *WDRB*. https://www.wdrb.com/in-depth/man-paid-96-000-for-illegal-lmpd-search-in-2012-sues-police-again-/article_ca59cad0-5e37-11ea-baa3-d783123f6156.html

²¹ Judges dismiss criminal cases after denouncing illegal searches by LMPD's Ninth Mobile Division, (June 24, 2019). *Louisville Future*. <https://louisvillefuture.com/archived-news/judges-dismiss-criminal-cases-after-denouncing-illegal-searches-by-lmpds-ninth-mobile-division/>

DOJ Must Restore its Commitment to Investigating and Addressing Systemic Policing Problems Nationally

Even as we request a federal investigation into the police shooting that resulted in Breonna Taylor's death, we remain concerned that this request will succumb to the decision-making process of an agency that has abdicated its responsibility for local police oversight and accountability. Despite the racially biased and unconstitutional practices repeatedly uncovered by previous pattern or practice investigations, the DOJ has, under the current administration, adopted a policy that significantly encumbers department attorneys attempting to pursue pattern or practice investigations or negotiate settlement agreements and consent decrees.²² DOJ leaders have declared that the agency intends to "avoid harmful federal intrusion in the daily work of local police,"²³ and proclaimed a commitment to the interests of law enforcement to the detriment of the communities in which those officers serve.²⁴

DOJ must return to conducting true oversight and demanding accountability from state and local police departments. As we have said before, DOJ's current policies and practices pertaining to local policing are an "attack on the core mission of the Department of Justice" and "a slap in the face to the dedicated career staff of the department who work tirelessly to enforce our nation's civil rights laws."²⁵ DOJ must use its statutory authority to conduct federal civil rights pattern or practice investigations, investigate and sue law enforcement agencies, and enter into federal agreements to ensure constitutional policing.

Additionally, DOJ must enforce federal civil rights laws, such as Title VI of the Civil Rights Act of 1965, which prohibits recipients of federal financial assistance from discriminating based on race and national origin. And it should take proactive steps to advise police departments across the country that they can effectively promote public safety while respecting the constitutional rights of those in the communities they protect.

Conclusion

As we continue to witness law enforcement agencies exercise excessive use of force and undertake other troubling practices that systemically violate individuals' civil rights in predominantly minority communities, DOJ must take swift and strong action to denounce these practices and hold to account the

²² Sessions, J., (Nov. 7, 2018). Att'y Gen., Memorandum for Heads of Civil Litigating Components & United States Attorneys on the Principles and Procedures for Civil Consent Decrees and Settlement Agreements with State and Local Governmental Entities. <https://www.justice.gov/opa/press-release/file/1109681/download>

²³ Sessions, J. (Apr. 17, 2017). Jeff Sessions: 'Avoid harmful federal intrusion' *USA Today* <https://www.usatoday.com/story/opinion/2017/04/17/jeff-sessions-avoid-harmful-federal-intrusion-editorialsdebates/100579848/>

²⁴ Rubin, J. (Dec. 5, 2019). What to do with an attorney general who disdains justice. *The Washington Post*. <https://www.washingtonpost.com/opinions/2019/12/05/bar-should-hold-barr-accountable/>

²⁵ See, e.g., The Leadership Conference. (Nov. 8, 2018). *Sessions Gutted Key Tool for Department of Justice to Fix Unconstitutional Conduct*. <https://civilrights.org/2018/11/08/sessions-gutted-key-tool-for-department-of-justice-to-fix-unconstitutionalconduct/>



state and local departments that deploy them. This includes pursuing a federal civil rights investigation of fatal police shooting of Breonna Taylor and opening a pattern or practice investigation into the string of deeply troublesome actions by the LMPD in the past decade. More broadly, we reiterate our call for DOJ to restore its commitment to addressing the systemic constitutional violations by police departments across the country. To follow up, please contact Sakira Cook of The Leadership Conference on Civil and Human Rights at cook@civilrights.org.

Sincerely,

The Leadership Conference on Civil and Human Rights