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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:

Last week, our nation witnessed yet another senseless and horrific loss of life as police officers killed George Floyd in Minneapolis, Minnesota. On behalf of The Leadership Conference on Civil and Human Rights (The Leadership Conference) and the **XX** undersigned organizations, we urge the U.S. Department of Justice (DOJ) to fully investigate the circumstances surrounding Mr. Floyd's death as well as the Minneapolis Police Department's (MPD) long history of brutality against Black and Brown individuals in the community it serves.

While we believe DOJ's pledge to work "diligently and collaboratively" on a federal civil rights investigation of the officers involved in Mr. Floyd's death is a first step,¹ it alone is insufficient to meet our current moment. We urge DOJ to also pursue a pattern or practice investigation of MPD for persistent civil rights violations, and to strengthen the agency's role in addressing systemic issues of police misconduct across the country. As our nation continues to reel at the string of recent tragedies that have once again highlighted the racial disparities in American policing, it is critical that DOJ use all of the statutes over which it has jurisdiction to take a leading role in demanding accountability from its state and local law enforcement partners.

We recognize that we are calling on you to enforce federal civil rights statutes at a critical time in our nation's history, and at a time when you continue to give us ample reason to doubt your willingness to fulfil your oath to "support, protect, and defend the Constitution of the United States." We watched you abandon that oath when you ordered federal police and security officials to use tear gas on peaceful protestors exercising their First Amendment rights outside of the White House. We join the rest of the country and the world in watching if you will now begin to fulfill that oath, and we urge you to uphold your solemn obligation to do justice not just in this case, but in all cases seeking to support, protect, and defend the Constitution.

¹ U.S. Department of Justice. (May 29, 2020). *Attorney General William P. Barr's Statement on the Death of Mr. George Floyd*. <https://www.justice.gov/opa/pr/attorney-general-william-p-barrs-statement-death-mr-george-floyd>

DOJ Must Conduct a Thorough Criminal Investigation of All of the Officers Involved in the Killing of George Floyd

On May 25, 2020, 46-year old George Floyd, an African-American man, was killed by an MPD officer despite his desperate cries for help and the pleas of bystanders witnessing the horror. Responding to a call about the alleged use of a \$20 counterfeit bill, MPD officers pulled Mr. Floyd from a car, handcuffed him, and pinned him to the ground just after 8:00 p.m.² Harrowing video recordings then show Mr. Floyd repeatedly gasping “I can’t breathe,” and calling out for his deceased mother as MPD officer Derek Chauvin kneels on his neck for nearly nine minutes—including nearly three minutes during which Mr. Floyd appears nonresponsive.³ During this time, three other officers at the scene can be seen doing nothing to help Mr. Floyd, with one instead holding down his back and another his legs.⁴ At no time did any of the officers attempt to render medical assistance to Mr. Floyd, who lay lifeless on the pavement by the time first responders were finally called to the scene.⁵

Since Mr. Floyd’s death, all four officers involved have been fired from the MPD, and on May 28, Hennepin County prosecutors arrested Officer Chauvin on charges of third degree murder and second-degree manslaughter.⁶ In addition to the state investigation led by the Minnesota Bureau of Criminal Apprehension,⁷ the investigations into the incident by both the Federal Bureau of Investigation and DOJ⁸ are welcome steps. We urge DOJ to be diligent in conducting its expedited investigation under 18 U.S.C. § 242, which makes it unlawful for any person acting under the color of law—including police officers who are functioning or appear to be functioning in their official capacity⁹—to willfully deprive an individual of a right or privilege protected by the Constitution or laws of the United States.¹⁰ We also urge DOJ to be transparent regarding the scope of its investigation, and look forward to the outcome because we believe there is clear evidence to support a finding that federal civil rights violations occurred in this case.

² Kaul, G. (May 29, 2020). What we know about the events surrounding George Floyd’s death and its aftermath: a timeline. *MinnPost*. <https://www.minnpost.com/metro/2020/05/what-we-know-about-the-events-surrounding-george-floyds-death-and-its-aftermath-a-timeline/>

³ Thorbecke, C. (May 29, 2020). Derek Chauvin had his knee on George Floyd’s neck for nearly 9 minutes, complaint says. *ABC News*. <https://abcnews.go.com/US/derek-chauvin-knee-george-floyds-neck-minutes-complaint/story?id=70961042>

⁴ Furber, M., Burch, A., Robles, F. (May 29, 2020). What Happened in the Chaotic Moments Before George Floyd Died. *The New York Times*. <https://www.nytimes.com/2020/05/29/us/derek-chauvin-george-floyd-worked-together.html>

⁵ Kaul, G. (May 29, 2020). What we know about the events surrounding George Floyd’s death and its aftermath: a timeline. *MinnPost*. <https://www.minnpost.com/metro/2020/05/what-we-know-about-the-events-surrounding-george-floyds-death-and-its-aftermath-a-timeline/>

⁶ *Ibid.*

⁷ Hennepin County Attorney’s Office Statement on Video. (May 26, 2020).

<https://www.hennepinattorney.org/news/news/2020/May/hennepin-county-attorneys-office-statement-on-video>

⁸ U.S. Department of Justice. (May 29, 2020). *Attorney General William P. Barr’s Statement on the Death of Mr. George Floyd*. <https://www.justice.gov/opa/pr/attorney-general-william-p-barrs-statement-death-mr-george-floyd>

⁹ U.S. Department of Justice. Deprivation of Rights Under Color of Law. <https://www.justice.gov/crt/deprivation-rights-under-color-law>

¹⁰ 18 U.S.C. § 242.

DOJ Must Pursue a Pattern or Practice Investigation of the Minneapolis Police Department

George Floyd's fatal encounter with the MPD unfortunately represents just one of many incidents of police brutality committed by members of the MPD, particularly against people of color. The MPD's longstanding and recent history support the opening of an investigation into whether the Department engaged in a pattern or practice of excessive use of force and race discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and relevant statutes.

Documented racism on the force dates back to the 1940s, when the MPD's "morals squad" targeted the African-American community,¹¹ and have persisted to the point that MPD's own chief, who is African-American, sued the Department for race discrimination earlier in his career.¹² The numerous instances of police violence that have devastated the people of Minneapolis in recent years reflect this longstanding history of racism within the Department. In 2015, MPD officers fatally shot unarmed 24-year old Jamar Clark in the head while he was handcuffed,¹³ and in 2018, Thurman Blevins was killed by police during a foot chase as he begged, "Please don't shoot me; Leave me alone."¹⁴ Data show that one-third of the individuals killed by MPD officers between 2000 and 2018 were unarmed, and approximately 63 percent of those killed were black, though African Americans comprise just 19 percent of the city's population.¹⁵

According to a 2015 DOJ report, MPD "lacked either the authority or the will to discipline and remove bad officers from patrol" and "failed to set clear criteria on the use of force and de-escalation."¹⁶ MPD also continues to allow officers to use chokeholds, a dangerous practice responsible for the death of Eric Garner in 2014, and banned in cities like New York, Atlanta, Miami, and Washington, D.C.¹⁷ In fact, MPD policy currently authorizes the use of two forms of neck restraints in instances where individuals

¹¹ Freedman, S. (May 30, 2020). The problem with the Minneapolis police has decades-deep roots. *The Washington Post*. <https://www.washingtonpost.com/opinions/2020/05/30/problem-with-minneapolis-police-has-decades-deep-roots/>

¹² Furber, M., Eligon, J., and Burch, A. (May 27, 2020). Minneapolis Police, Long Accused of Racism, Face Wrath of Wounded City. *The New York Times*. <https://www.nytimes.com/2020/05/27/us/minneapolis-police.html>; See also, Dewan, S., and Kovaleski, S. (May 30, 2020). Thousands of Complaints Do Little to Change Police Ways. *The New York Times*. <https://www.nytimes.com/2020/05/30/us/derek-chauvin-george-floyd.html>

¹³ What we know about the death of Jamar Clark (Mar. 30, 2016). *Star Tribune*. <https://www.startribune.com/what-we-know-about-the-death-of-jamar-clark/353199331/>

¹⁴ Berman, M. and Farzan, A. (July 30, 2018). Minneapolis police officers won't be charged for fatally shooting Thurman Blevins. *The Washington Post*. <https://www.washingtonpost.com/news/morning-mix/wp/2018/07/30/thurman-blevins-shooting-graphic-body-cam-footage-shows-fleeing-black-man-killed-by-minneapolis-police-who-say-he-was-armed/>

¹⁵ Hargarten, J. (July 15, 2018). Minneapolis police shootings since 2000: A deeper look at who and where. *Star Tribune*. <https://www.startribune.com/minneapolis-police-shootings-since-2000-a-deeper-look-at-who-and-where/435882213/>

¹⁶ Lartey, J., and Weichselbaum, S. (May 28, 2020). Before George Floyd's Death, Minneapolis Police Failed to Adopt Reforms, Remove Bad Officers. *The Marshall Project*. <https://www.themarshallproject.org/2020/05/28/before-george-floyd-s-death-minneapolis-police-failed-to-adopt-reforms-remove-bad-officers>

¹⁷ *Ibid.*; The Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*, p. 123-124. https://policing.civilrights.org/report/Policing_Full_Report.pdf

resist arrest¹⁸ despite the fact that such maneuvers create a high risk of restricting blood or oxygen flow to an individual’s brain.¹⁹ Records reveal that MPD officers have used neck restraints at least 237 times since 2015, including in at least one instance where an individual was deemed “verbally noncompliant” during a traffic stop.²⁰ The practice has resulted in MPD officers rendering 44 individuals unconscious—60 percent of whom were African-American—in just the last five years. The knee-to-neck restraint used in George Floyd’s death, and particularly the length of time for which it was deployed, runs directly in the face of expert opinions that such practice is “excessive”²¹ as well as DOJ use of force guidance recommending that individuals only be kept on their stomachs until successfully handcuffed.²² Moreover, MPD’s use of a knee-to-neck restraint similar to the one used in Mr. Floyd’s death was scrutinized a decade ago, in September 2010, when it resulted in the death of David Cornelius Smith, an African-American man battling mental health issues.²³

Additionally, two of the officers involved in George Floyd’s death had a history of violence. Officer Chauvin was the subject of at least 18 complaints—including for his use of force—over the course of his 19-year MPD career,²⁴ and as well as a lawsuit that alleged constitutional rights violations.²⁵ He had previously been involved in at least three officer-involved shootings, one of which was fatal.²⁶ Another officer present for Mr. Floyd’s final moments had also been the subject of six complaints, and settled a

¹⁸ Minneapolis Police Department, *Policy & Procedure Manual, Use of Neck Restraints and Choke Holds (5-311)*. http://www.minneapolismn.gov/police/policy/mpdpolicy_5-300_5-300?_cf_chl_jschl_tk_=00ae25c933aed4bf32b283dd5b75609011f4aad2-1590879891-0-AZer4uBn5_QeCB0r7FM-bFSs5o93K8DojsHrWZ7LS2Q_mThdx8UfPqvkuF8P42SSVJOE_chvAYAP_TPNVHzMcomdy7enSDXgItlJtZCenqYnIQyChG1AXweAxPsd6i-MSkwRR5e9cEmFKiwNGuuHNxU6W78Mkef_AU8p4J6Ro3CN6XtP5A96rdRUd2KdSiCbtdZBa1sQb1O5WTgmR3p5hqFMitMtWxZIM2gDwTUeWWTog4JGVumKtNhZc8fIAWajLrZp0mhmd1hNnvP5Pt3HZ79PTPq_MnFomUGShxU_vUnehvo5wh1oJkEFECzev350vw

¹⁹ The Leadership Conference on Civil and Human Rights. (2019). *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*, p. 123. https://policing.civilrights.org/report/Policing_Full_Report.pdf

²⁰ Siegel, E., Lehren, A., and Blankenstein, A. (June 1, 2020). Minneapolis police rendered 44 people unconscious with neck restraints in five years. *NBC News*. <https://www.nbcnews.com/news/us-news/minneapolis-police-rendered-44-people-unconscious-neck-restraints-five-years-n1220416>

²¹ Hauck, G., and Wagner, D. (May 29, 2020). George Floyd death: Experts say knee-to-neck restraint is dangerous but Minneapolis allows it. *USA Today*. <https://www.usatoday.com/story/news/nation/2020/05/29/george-floyd-experts-say-neck-restraint-allowed-minneapolis-can-kill/5274334002/>

²² U.S. Department of Justice, Office of Justice Programs, National Institute of Justice. (June 1995). Positional Asphyxia-Sudden Death. <https://www.ncjrs.gov/pdffiles/posasph.pdf>

²³ Furst, R. (May 24, 2013). Man’s Death Puts Minneapolis Police Tactic Under Scrutiny. *Star Tribune*. <https://www.startribune.com/feb-7-2012-man-s-death-puts-minneapolis-police-tactic-under-scrutiny/138821999/?refresh=true>

²⁴ Andone, D., Silverman, H., and Alonso, M. (May 29, 2020). The Minneapolis police officer who knelt on George Floyd’s neck had 18 previous complaints against him, police department says. *CNN*. <https://www.cnn.com/2020/05/28/us/minneapolis-officer-complaints-george-floyd/index.html>

²⁵ Ortiz, E., and Mendell, D. (May 27, 2020). Minneapolis police officer at center of George Floyd’s death had history of complaints. *NBC News*. <https://www.nbcnews.com/news/us-news/minneapolis-police-officer-center-george-floyd-s-death-had-history-n1215691>

²⁶ Mannix, A. (May 26, 2020). What we know about Derek Chauvin and Tou Thao, two of the officers caught on tape in the death of George Floyd. *Star Tribune*. <https://www.startribune.com/what-we-know-about-derek-chauvin-and-tou-thao-two-of-the-officers-caught-on-tape-in-the-death-of-george-floyd/570777632/?refresh=true>

lawsuit involving his alleged use of force in 2017 for \$25,000.²⁷ Together, these facts strongly support the opening of an investigation into a pattern of systemic constitutional violations, in which the MPD violates the rights of Black people in Minneapolis.

DOJ is authorized to investigate police departments for patterns or practices of systemic, unconstitutional policing under 34 U.S.C. § 12601 (previously codified at 42 U.S.C. § 14141) and may obtain a court order requiring law enforcement agencies to address systemic institutional failures.²⁸ As detailed above, MPD has a terrifying history of police brutality, particularly toward people of color, which merits immediate DOJ intervention. The incidents described above are not just one-off incidents or the result of a few bad apples in the Department, but an indicator of systemic problems that continue to threaten the constitutional rights of Minneapolis residents.

DOJ Must Fulfill its Obligation to Investigate Police Departments for Patterns or Practices of Unconstitutional Policing Across the Country

In addition to requesting the continued federal investigation into the officers involved in the death of George Floyd and a pattern or practice investigation into the MPD, we also urge DOJ to exercise its jurisdiction to enforce the federal civil rights statutes that allow it to take action to hold accountable state and local law enforcement agencies across the country. The political leadership at DOJ has abdicated its responsibility to conduct oversight of these agencies in a way that will restore public trust and ensure every department respects the common humanity of everyone in our communities, regardless of the color of their skin. This administration's decision to abandon its commitment to enforce the pattern or practice statute means that it has deprived the country of the service of the dedicated career DOJ attorneys with the expertise and experience to effectively investigate pattern or practice cases and negotiate settlement agreements and consent decrees.²⁹ DOJ has continued to ignore the importance of these investigations in revealing racially-biased and unconstitutional practices in cities across the country.

The Department of Justice must take swift and strong action not only to conduct criminal investigations of individual officers, but also to recommit itself to conducting true oversight and requiring full accountability of law enforcement agencies throughout the country. DOJ must redirect its efforts to using its statutory authority to conduct federal civil rights pattern and practice investigations, investigate and sue law enforcement agencies, and enter into federal agreements, rather than undermining the DOJ's mission and stifling the tireless civil rights work of its dedicated career staff.³⁰ It should condition federal

²⁷ *Ibid.*

²⁸ U.S. Department of Justice, Civil Rights Division, The Civil Rights Division's Pattern and Practice Police Reform Work: 1994-Present, January 2017, available at <https://www.justice.gov/crt/file/922421/download>

²⁹ Jefferson B. Sessions, 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 (Nov. 7, 2018) available at <https://www.justice.gov/opa/press-release/file/1109681/download>.

³⁰ 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/>.



grants on agencies' adoption of 21st century policing practices, and take steps to ensure that departments across the country honor the constitutional rights of the individuals they serve.

A pattern or practice investigation and the reform process that follows can enable police departments to address problems identified and engage in more effective policing that is constitutional and responds to the needs of communities. It can also help make sure that police officers have resources, training, and policies they need, and help earn trust in the communities they serve.

Conclusion

George Floyd, like so many others, did not have to die at the hands of police. This administration claims that it supports the interests of law enforcement through President Trump's exhortation for police to "rough up" people in their custody, or his most recent calls last week for racist violence against protestors. However, these racist and dangerous calls for unconstitutional policing threaten the safety of officers as well as the people they serve.³¹

As the head of the Department of Justice, you are sworn to protect the Constitution and to pursue justice and must demand full accountability from law enforcement agencies across the nation. That is why we again ask that DOJ be transparent with its investigation into the officers involved in Mr. Floyd's death, open a civil rights pattern or practice investigation into the historically fraught practices of the Minneapolis Police Department, and ultimately, reconsider its broader approach to addressing our nation's systemic issues of police violence and brutality. 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

³¹ 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/>.