

# U.S. House of Representatives

## Committee on the Judiciary

Washington, DC 20515-6216  
One Hundred Sixteenth Congress

May 28, 2020

The Honorable William Barr  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530-0001

The Honorable Eric Dreiband  
Assistant Attorney General, Civil Rights Division  
U.S. Department of Justice  
950 Pennsylvania Avenue, N.W.  
Washington, D.C. 20530-0001

Dear Attorney General Barr and Assistant Attorney General Dreiband:

We the undersigned Members of the House Judiciary Committee ask that the Department of Justice: (i) evaluate the actions of local officials responsible for investigating the killing of Ahmaud Arbery, including the role played by local prosecutors, and whether they conspired to deprive Mr. Arbery of his constitutional rights, (ii) initiate an investigation into whether the death of Breonna Taylor, an unarmed COVID-19 first responder who was shot eight times by Louisville Metro Police Department (LMPD) officers while asleep in her own apartment, was part of a pattern or practice of unconstitutional conduct by the LMPD, and (iii) investigate the death of George Floyd while in the custody of the Minneapolis Police Department (MPD), including whether it was part of a pattern or practice of unconstitutional conduct by the MPD. We further ask that the Federal Bureau of Investigation, Department of Justice Civil Rights Division, and the Department of Justice Community Relations Service brief the Committee on the status of these matters at the earliest practical time.

### **Facts Pertaining to the Death of George Floyd**

Mr. Floyd's detention by the MPD, which occurred yesterday and was captured on video, is the latest in a string of high profile and outrageous extrajudicial killings of African Americans suspected of committing minor criminal violations and is eerily reminiscent of the NYPD killing of Eric Garner. The nine-minute video appears to show an officer kneeling on Mr. Floyd's neck as he begs for help, stating repeatedly that he can't breathe.<sup>1</sup>

MPD officers claim that Mr. Floyd was resisting their attempts to arrest him for forgery—a non-violent offense.<sup>2</sup> As the officer applied the full force of his full body weight on top of Mr. Floyd with a knee to the neck, bystanders called for officers to reduce the amount of force being

<sup>1</sup> *FBI investigating after man dies in Minneapolis Police custody; video shows him saying "I can't breathe,"* KARE11, May 26, 2020.

<sup>2</sup> *"Being Black in America Should Not Be A Death Sentence": Officials Respond to George Floyd's Death,* WCCO CBS MINNESOTA, May 26, 2020.

applied.<sup>3</sup> “He’s not even resisting arrest right now, bro,” one bystander tells the officer and his partner.<sup>4</sup> One bystander observed that the officer was cutting off Mr. Floyd’s air supply: “You’re...stopping his breathing right now, you think that’s cool?”<sup>5</sup> After about five minutes into the video, Mr. Floyd appears to go unconscious.<sup>6</sup> Police then called an ambulance which took Mr. Floyd to the Hennepin County Medical Center where he was pronounced dead.<sup>7</sup>

There simply is no excuse for any law enforcement officer to treat any human being in the brutally callous way the Minneapolis Police Department treated Mr. Floyd, apparently causing his death. We applaud MPD’s decision to fire four of the officers involved but call for an investigation into the full extent to which all persons involved may be civilly or criminally liable for Mr. Floyd’s death, including whether it was part of a pattern of civil rights violations by the MPD.<sup>8</sup>

### **Facts Pertaining to the Killing of Ahmaud Arbery**

The killing of Mr. Arbery and its subsequent investigation are reminiscent of early 20<sup>th</sup> century lynchings in the Jim Crow South. On February 23, 2020, Travis and Gregory McMichael killed Mr. Arbery while he was out for a jog, purportedly because they suspected him of committing a burglary. Gregory McMichael was a former police officer and investigator with the Glynn County Police Department (GCPD) and Brunswick Judicial Circuit, the entities responsible for investigating the killing. The killing was captured on video, yet law enforcement refused to arrest the McMichaels for 74 days—until the video was leaked to the public on May 7, 2020.

Gregory McMichael’s status as a former law enforcement officer, in addition to his relationship with the officials responsible for investigating Mr. Arbery’s killing, raise questions as to whether some combination of racial bias, conflicts of interest, or gross negligence led to Mr. Arbery’s death and compromised the integrity of the subsequent investigation. Reports indicate that Gregory McMichael worked as an investigator with the Brunswick Judicial Circuit District Attorney’s Office under Jackie L. Johnson, the attorney who allegedly instructed responding officers to refrain from arresting the McMichaels at the scene. Reports also indicate that McMichael had a history of failing to complete required use-of-force and firearms trainings, and that in 2014, Johnson intervened on his behalf to waive those requirements so that he could continue to work as an investigator in her office.

In 2019, McMichael was stripped of his arrest powers due to his continued failure to comply with peace officer use-of-force training standards. On February 27, 2020, the Georgia Attorney General’s Office received a letter from Johnson indicating her intent to recuse herself from the case. In this letter, she omitted any reference to communications she had with the GCPD regarding the arrest of the McMichaels.

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> WCCO CBS MINNESOTA, *supra*, note 2.

<sup>7</sup> KARE11, *supra*, note 1.

<sup>8</sup> See *MPD Chief Arradondo: 4 Police Officers Fired Following Death of George Floyd*, WCCO CBS MINNESOTA, May 2020.

Reports indicate that Johnson personally recruited George Barnhill, District Attorney for the Waycross Judicial District, to take over the case following her recusal, another fact she omitted from her recusal letter. Barnhill's son works as an assistant district attorney under Johnson's supervision, and apparently worked with McMichael on a prior prosecution involving Mr. Arbery—yet another fact Johnson omitted in her communications with the Georgia Attorney General's Office. The day after the killing, Barnhill advised the GCPD that they lacked probable cause to arrest the McMichaels for killing Mr. Arbery.

On April 7, 2020, Barnhill decided to recuse himself based on his son's work with McMichael on the prior case involving Mr. Arbery, a fact which Barnhill claims to have discovered in early March 2020. In two communications regarding his decision to recuse, Barnhill defended his refusal to charge the McMichaels for killing Mr. Arbery. In doing so, Barnhill accepted the McMichaels' version of the events, including their self-serving assertions that: (1) they confronted Arbery with openly drawn firearms because they had probable cause to believe Mr. Arbery burglarized a home that was under construction, (2) Mr. Arbery violently attacked Travis McMichael, and (3) Travis killed Mr. Arbery in self-defense. Barnhill also seemed to justify Mr. Arbery's killing by citing his prior criminal record and that of his family members.<sup>9</sup> Finally, Barnhill falsely asserted that there was a video recording of Mr. Arbery "burglarizing a home immediately preceding the chase and confrontation."<sup>10</sup>

Several evidentiary sources undermine Barnhill's conclusions, including video surveillance footage of several individuals—of different races—walking in and out of the home construction site that the McMichaels accused Mr. Arbery of burglarizing. Also, the owner of the home construction site, alleged burglary victim Larry English, stated that there was no property stolen from the site.

### **Facts Pertaining to the Killing of Breonna Taylor**

As with Mr. Arbery, Breonna Taylor's tragic death highlights the need for federal oversight of state and local law enforcement agencies to ensure they remain accountable to the communities they serve. Ms. Taylor was shot eight times and killed by LMPD Criminal Interdiction Division officers executing a "no-knock" search warrant on her apartment during the early morning hours of March 13, 2020. Apparently, the subject of the warrant was already in police custody prior to LMPD officers arriving at Ms. Taylor's apartment. Upon arrival, the officers, who were in plain clothes, did not knock and did not identify themselves as police.<sup>11</sup> Ms. Taylor's boyfriend, Kenneth Walker, a licensed gun owner, used his firearm to defend the home against what he believed to be an attempted burglary.<sup>12</sup> The officers fired a hail of bullets into the apartment,

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<sup>9</sup> See Email from George Barnhill to Blair McGown and Karen Crittendon, dated Apr. 7, 2020 ("This family are not strangers to the local criminal justice system. From best we can tell, Ahmaud's older brother has gone to prison in the past and is currently in the Glynn jail, without bond, awaiting new felony prosecution. It also appears a cousin has been prosecuted by DA Johnson's office. Ahmaud, the deceased, had a juvenile and adult felony record."); see also, Undated Letter from George Barnhill to Captain Tom Jump ("Arbery's mental health records & prior convictions help explain his apparent aggressive nature and his possible thought pattern to attack an armed man").

<sup>10</sup> See Barnhill Email, *supra* note 1.

<sup>11</sup> Complaint at 7, *Palmer v. Hankison*, No. 20-CI-002694 (Jefferson Cnty. Cir. Ct. Apr. 27, 2020).

<sup>12</sup> *Id.* at 3, 10.

over twenty rounds, striking Ms. Taylor eight times and killing her.<sup>13</sup> The officers were not wearing body cameras.<sup>14</sup>

The LMPD claims that despite securing a “no-knock” warrant, the officers knocked multiple times and announced their presence. LMPD also arrested Mr. Walker for attempted murder and first-degree assault, despite his claims that he lawfully used his firearm in self-defense pursuant to the “castle-doctrine” which would be an absolute affirmative defense to the charges. As of May 13, 2020, Jefferson County Commonwealth’s Attorney Tom Wine was continuing to pursue Walker’s prosecution, raising questions about whether the prosecution is intended to provide cover for charges of officer misconduct. Ms. Taylor’s killing is the latest in a string of excessive force allegations against the LMPD, all of which require federal scrutiny into whether the LMPD is engaging in a pattern or practice of depriving individuals of their constitutional rights pursuant to 34 U.S.C. § 12601.<sup>15</sup>

The decision to prosecute Mr. Walker for defending his home with a lawfully possessed firearm, especially when compared to the investigation into Mr. Arbery’s killing, raises serious public concerns over whether law enforcement can be trusted to enforce the law with fairness and transparency and in a manner that values the lives of African American citizens.

The killings of Mr. Floyd, Mr. Arbery, and Ms. Taylor all illustrate the need for national evidence-based policing and training standards that promote safe and humane local, state, and federal law enforcement practices, as well as an increase in federal resources to incentivize reform. In response to Ms. Taylor’s killing, the LMPD has imposed additional oversight for no-knock warrants and now requires all sworn officers to wear body cameras when serving warrants.<sup>16</sup>

The fair, transparent, and equal administration of justice is a bedrock principle for citizens to maintain the trust required to govern themselves in an ordered society. However, public trust in the blind administration of justice is being seriously tested by recent high-profile killings of African Americans during attempts to enforce state laws as well as by the lack of transparency regarding how and why those killings occurred. It is for these reasons that we are today asking the relevant sections of the Department to: (1) review the role of local prosecutors in the Ahmaud Arbery case and whether they conspired to deprive Mr. Arbery of his constitutional rights, (2) initiate a “pattern or practice” investigation into the LMPD in the Breonna Taylor case, (3) support existing investigations into the death of George Floyd while in custody of the

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<sup>13</sup> *Id.* at 9.

<sup>14</sup> Nick Picht, *LMPD officers serving warrant at Breonna Taylor’s home were not wearing body cameras*, WAVE 3 NEWS, May 16, 2020.

<sup>15</sup> See Complaint, *supra* note 3, at 4 (“Cosgrove has a prior history of shooting a Louisville resident seven times,” “Defendant Hankison has a prior history of unnecessary force and corruption within his employment”); see also, *Man sues LMPD, Metro Government for excessive force claims during traffic stop*, WLKY, Aug. 19, 2019; see also, Sarah Ladd, *LMPD officers held family at gunpoint in botched drug arrest, lawsuit says*, LOUISVILLE COURIER JOURNAL, Oct. 30, 2019; see also, Jason Riley, *LMPD officer fired over tasing incident sues to get job back*, WDRB.COM, Jan. 21, 2020.

<sup>16</sup> Tessa Duvall and Darcy Costello, *Louisville Metro Police to toughen policies on no-knock warrants, body cameras*, LOUISVILLE COURIER JOURNAL, May 19, 2020.

Minneapolis Police Department, and (4) provide a briefing to the members of this Committee regarding all three matters. We look forward to hearing from your office.

Sincerely,



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Jerrold Nadler  
Chairman



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Zoe Lofgren  
Member of Congress



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Sheila Jackson Lee  
Member of Congress



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Steve Cohen  
Member of Congress



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Henry C. "Hank" Johnson, Jr.  
Member of Congress



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Theodore E. Deutch  
Member of Congress



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Karen Bass  
Member of Congress



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Cedric L. Richmond  
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Hakeem S. Jeffries  
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David N. Cicilline  
Member of Congress



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Eric Swalwell  
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Ted Lieu  
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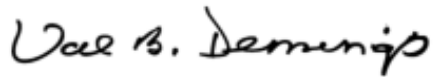
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Jamie Raskin  
Member of Congress



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Pramila Jayapal  
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Madeleine Dean  
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Debbie Mucarsel-Powell  
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Veronica Escobar  
Member of Congress

cc: Rep. Jim Jordan  
Ranking Member