

United States Senate
WASHINGTON, DC 20510

June 18, 2020

The Honorable William P. Barr
Attorney General
Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530

The Honorable Alex Azar
Secretary
Department of Health and Human Services
200 Independence Ave SW
Washington, D.C. 20201

The Honorable Chad F. Wolf
Acting Secretary
Department of Homeland Security
1880 2nd Street SW
Washington, D.C. 20024

The Honorable David L. Bernhardt
Secretary
Department of the Interior
1849 C Street NW
Washington, DC 20240

Dear Attorney General Barr, Secretary Azar, Acting Secretary Wolf, and Secretary Bernhardt,

Over the past several weeks, the nation has seen widespread demonstrations calling for an end to racial injustice and police misconduct, which have been catalyzed by the unjust deaths of George Floyd, Breonna Taylor, and Ahmaud Arbery, along with countless others. In this critical moment in the fight for systemic change, we call on your departments to take all necessary actions to protect both the civil rights and the health of protesters and the public. As people exercise their constitutional right to protest, it is of paramount importance that you ensure that law enforcement authorities do not contribute to the COVID-19 pandemic by engaging in practices that increase the risk of coronavirus spread, and by taking additional steps to protect public health data.

Black people, particularly Black men and boys, are far more likely to experience violence and discrimination at the hands of law enforcement than their non-Black peers.¹ Black people and other people of color are also far more likely to die of COVID-19.² The COVID-19 pandemic has only highlighted existing and ongoing systemic racial and ethnic disparities. As public health experts have made clear, racism is an ongoing public health crisis due to various systemic factors impacting Black people and other people of color, which include inequities in work and living conditions and access to health care and key social services.^{3, 4}

As people around the country protest against systemic racism and police violence, in large part wearing face masks, maintaining physical distance, using hand sanitizer, and taking other precautionary

¹ <https://www.pnas.org/content/117/3/1261>

² <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html>

³ <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html>

⁴ <https://www.apha.org/news-and-media/news-releases/apha-news-releases/2020/racism-is-a-public-health-crisis>

measures against coronavirus, it is vital that the actions of authorities do not jeopardize public health. More than 40,000 National Guard members have been deployed to respond to “civil unrest” missions, joining various federal law enforcement agencies, and local police departments nationwide in responding to nationwide protests.⁵ Authorities have used excessively forceful tactics that may increase the likelihood of coronavirus spread, while in many cases failing to wear face masks and disregarding other precautionary measures.^{6, 7, 8}

Reports indicate that, on June 1, 2020, Attorney General Barr personally ordered the clearing of peaceful protesters from Lafayette Square in front of the White House with excessive force including the use of tear gas and rubber bullets.⁹ Attorney General Barr denied that there was tear gas used, while the U.S. Park Service has since clarified that it was a “mistake” to insist that tear gas was not used.^{10, 11} Tear gas is a term for a class of respiratory irritants that cause a burning sensation and are often used in riot control.¹² Given these chemicals induce coughing, the need to gasp for air, and a strong urge to touch one’s face, public health experts warn that their use should be avoided during a respiratory pandemic.¹³ Further, evidence shows these chemicals cause inflammation and long-term damage of the respiratory tract that increases susceptibility to health conditions such as pneumonia and influenza, and, likely, COVID-19.¹⁴ To prevent increased risk of coronavirus transmission and to reduce unnecessary hospitalizations, we urge you to stop the use of chemical agents such as tear gas on protesters. Moving forward, we urge you to work to permanently eliminate the use of respiratory irritants including tear gas as a crowd dispersal technique given the widespread and long-term health impacts of its use.¹⁵

Public health and criminal justice experts have also raised concerns about the practice of arresting or confining demonstrators, as well as the need to reduce the number of people held in federal, state and local correctional facilities.¹⁶ Reports indicate that law enforcement have frequently “kettled” protesters, keeping them in close proximity to each other for extended periods of time, without proper protective equipment or access to sanitation.¹⁷ Arresting protesters for simply breaking curfew also increases the number of people detained in congregate settings. Given the person-to-person spread of the coronavirus, and the significant number of COVID-19 outbreaks that have occurred in congregate settings, these tactics place demonstrators, law enforcement, and the public in harm’s way. We urge you to instruct your federal law enforcement agencies, and encourage state and local law enforcement agencies, to

⁵ <https://www.cnn.com/us/live-news/george-floyd-protests-06-05-20/index.html>

⁶ <https://www.politico.com/news/2020/06/04/police-arrest-coronavirus-301913?nname=politico-nightly-coronavirus-special-edition&nid=00000170-c000-da87-af78-e185fa700000&nrid=0000016c-a9ca-db23-abfc-b9fa4b140002&nlid=2670445>

⁷ <https://www.vox.com/the-goods/2020/6/12/21288340/police-officers-masks-protests-coronavirus>

⁸ <https://www.nytimes.com/2020/06/11/nyregion/nypd-face-masks-nyc-protests.html>

⁹ https://www.washingtonpost.com/politics/inside-the-push-to-tear-gas-protesters-ahead-of-a-trump-photo-op/2020/06/01/4b0f7b50-a46c-11ea-bb20-ebf0921f3bbd_story.html

¹⁰ https://www.salon.com/2020/06/07/bill-barr-keeps-lying-about-the-use-of-pepper-spray-on-peaceful-protesters_partner/

¹¹ <https://www.vox.com/2020/6/5/21281604/lafayette-square-white-house-tear-gas-protest>

¹² <https://emergency.cdc.gov/agent/riotcontrol/factsheet.asp>

¹³ <https://www.propublica.org/article/tear-gas-is-way-more-dangerous-than-police-let-on-especially-during-the-coronavirus-pandemic>

¹⁴ <https://academic.oup.com/milmed/article/179/7/793/4259353#101149356>

¹⁵ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5096012/>

¹⁶ https://justiceroundtable.org/wp-content/uploads/2020/05/JR_Summary-of-COVID19-Recs_FINAL_May-29-2020.pdf

¹⁷ <https://www.politico.com/news/2020/06/04/police-arrest-coronavirus-301913?nname=politico-nightly-coronavirus-special-edition&nid=00000170-c000-da87-af78-e185fa700000&nrid=0000016c-a9ca-db23-abfc-b9fa4b140002&nlid=2670445>

avoid arresting or confining demonstrators or anyone taken into custody in a manner that could increase the spread of COVID-19.

Finally, as state and local health departments work to track and trace new cases of COVID-19, including in the days following large-scale demonstrations, it is of the utmost importance that information collected as part of the public health response to COVID-19 not be used for other purposes, including federal, state, or local law enforcement activities. Contact tracing is an important public health tool for identifying individuals who may have been exposed to coronavirus and keeping communities safe. Data collected by public health departments for this purpose must be strongly protected to ensure public trust.¹⁸ Simply put, this information must not be shared with law enforcement or immigration authorities, and we must assure the public of this fact. No one should worry about disclosing to public health officials or health care providers the fact that they attended a demonstration for fear of potential retaliation. It is vital that all Americans, particularly those who have or may be demonstrating, are informed of how their personal and health data are used and protected.¹⁹ Furthermore, law enforcement officials must stop using public health language such as “contact tracing” to refer to traditional police work and investigations, a practice that has been reported.²⁰ This is unacceptable in the midst of a global pandemic, as it creates confusion that could cause individuals to avoid COVID-19 contact tracing and testing for fear of arrest or prosecution. We must clearly distinguish police and law enforcement activities from public health work to maintain community trust and adequately respond to COVID-19.²¹

This is a critical moment for our nation. How our institutions respond will determine whether the coming weeks and months will lead to justice and unity, or discord and division. An aggressive and cruel response to people who are exercising their constitutional right to call for a higher standard in the fight for racial justice would only serve to aggravate a pandemic that is disproportionately hurting communities of color. We implore you to focus guidance for law enforcement on following public health expertise in responding to these protests, to instruct agencies to cease tactics that could heighten the risk of coronavirus transmission, and to swiftly protect all personal and health data collected as part of the COVID-19 response.

Sincerely,

/s/ Tammy Baldwin
Tammy Baldwin
United States Senator

/s/ Patty Murray
Patty Murray
United States Senator

/s/ Kamala D. Harris
Kamala D. Harris
United States Senator

/s/ Cory A. Booker
Cory A. Booker
United States Senator

¹⁸ <https://www.eff.org/deeplinks/2020/06/dont-mix-policing-covid-19-contact-tracing>

¹⁹ <https://www.eff.org/deeplinks/2020/06/dont-mix-policing-covid-19-contact-tracing>

²⁰ <https://slate.com/technology/2020/06/contact-tracing-law-enforcement-protests.html>

²¹ <https://www.vox.com/recode/2020/6/1/21277393/minnesota-protesters-contact-tracing-covid-19>

/s/ Thomas R. Carper
Thomas R. Carper
United States Senator

/s/ Edward J. Markey
Edward J. Markey
United States Senator

/s/ Robert Menendez
Robert Menendez
United States Senator

/s/ Tim Kaine
Tim Kaine
United States Senator

/s/ Elizabeth Warren
Elizabeth Warren
United States Senator

/s/ Tina Smith
Tina Smith
United States Senator

/s/ Richard Blumenthal
Richard Blumenthal
United States Senator

/s/ Ron Wyden
Ron Wyden
United States Senator

/s/ Christopher S. Murphy
Christopher S. Murphy
United States Senator

/s/ Sherrod Brown
Sherrod Brown
United States Senator

/s/ Mazie K. Hirono
Mazie K. Hirono
United States Senator

/s/ Bernard Sanders
Bernard Sanders
United States Senator

/s/ Christopher A. Coons
Christopher A. Coons
United States Senator

/s/ Amy Klobuchar
Amy Klobuchar
United States Senator