



May 20, 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 (The Leadership Conference), 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 American Civil Liberties Union (ACLU), an organization with more than 4 million members, activists, and supporters, advancing the promise of the Bill of Rights for all, we urge the U.S. Department of Justice (DOJ) to investigate the recent fatal police shooting of Dreasjon “Sean” Reed in Indianapolis, as well as the Indianapolis Metropolitan Police Department’s (IMPD) history of police violence against the Black and Brown communities it serves.

Specifically, we ask that DOJ: (1) open a federal civil rights investigation of the officers involved in the death of Dreasjon Reed; (2) pursue a pattern or practice investigation of IMPD for civil rights violations; and (3) reconsider its approach to addressing systemic police misconduct by law enforcement agencies nationally.

DOJ Must Open a Federal Civil Rights Investigation of Officers Involved in Reed Shooting

On May 6, 2020, 21-year old Dreasjon “Sean” Reed, a Black man, was shot and killed while running from police after a vehicle pursuit. The incident began when IMPD police, including Chief Randal Taylor, pursued Mr. Reed for allegedly speeding and almost striking other cars.¹ Mr. Reed broadcasted the chase on his Facebook Live page, which then shows him parking his car and giving his location to those watching as he pleads for help, saying “please come get me.”² Police then pursued Mr. Reed on foot before shooting him at least a dozen times within minutes of him leaving his car. Mr. Reed’s video continued to stream after the shooting and captures a detective callously saying, “Think it’s going to be a closed casket, homie”³ Sadly, the social media broadcast of Mr. Reed’s unnecessary fatal police shooting is reminiscent of Philandro Castile’s 2016 fatal police shooting in Minnesota.⁴ As Congressman

¹ Josiah Bates, *Indianapolis Police Officer Shoots Man in Livestreamed Killing. Here's What to Know*, TIME, May 7, 2020, <https://time.com/5833625/indianapolis-police-shooting-sean-reed/>.

² *Id.*

³ Nicholas Bogel-Burroughs, *Indianapolis Police Face Growing Questions After Killing 3 People in 8 Hours*, N.Y. Times, May 7, 2020, <https://www.nytimes.com/2020/05/07/us/sean-reed-indianapolis-shooting.html>.

⁴ Charise Frazier, *The Killings of Ahmaud Arbery & Sean Reed Feel Frighteningly Similar to July 2016*, Madamenoire, May 7, 2020, <https://madamenoire.com/1163284/the-killings-of-ahmaud-arbery-sean-reed-feels-frighteningly-similar-to-july-2016/>.

André Carson (D-IN-7) said following news of Mr. Reed’s shooting, “Simply being Black in America should not be a death sentence, but for countless people, it is.”⁵

Although Indianapolis Mayor Joe Hogsett has called for, and federal officials have agreed to, DOJ monitoring the local investigation of Mr. Reed’s fatal police shooting,⁶ DOJ should conduct a separate, independent federal civil rights investigation. Under § 242 of Title 18, it is unlawful for any person acting under color of law to willfully deprive a person of a right or privilege protected by the Constitution or laws of the United States.⁷ Persons acting under color of law includes police officers and other law enforcement officials who are functioning or appear to be functioning in their official capacity.⁸ A federal civil rights investigation is warranted because this case potentially involves excessive force and other police misconduct in violation of Mr. Reed’s Fourth Amendment right against unreasonable seizure.

DOJ Must Pursue Pattern or Practice Investigation of the Indianapolis Police Department

Unfortunately, Mr. Reed’s fatal police shooting is not an isolated incident, which suggests possible systemic constitutional violations by IMPD. In fact, the very same day that police killed Mr. Reed, IMPD officers killed two other people in Indianapolis. In one police fatally shot a man⁹, and in the other, an officer struck and killed a pregnant pedestrian—all mere hours apart.¹⁰ In addition to this police-involved violence, IMPD has previously generated national attention for inflicting fatal force on Black residents. In particular, on June 29, 2017, Aaron Bailey, Black and unarmed, was shot and killed by two IMPD officers following a late-night traffic stop, vehicle pursuit, and crash.¹¹ On September 26, 2015, an 18 year-old Black youth, Terrell Day, died in police custody after telling IMPD officers that he could not breathe.¹² Last year, IMPD officers were involved in other documented incidents of excessive force. In one incident, an

⁵ Kaitlin Lange, *Indianapolis community leaders react to two fatal officer-involved shootings*, Indianapolis Star, May 7, 2020, <https://www.indystar.com/story/news/crime/2020/05/07/indianapolis-police-shooting-reaction-officer-involved-shootings/3087324001/>.

⁶ Ryan Martin & Tim Evans, Hogsett, *Mears ask for outside help on IMPD shooting investigations*, Indianapolis Star, May 8, 2020, <https://www.indystar.com/story/news/crime/2020/05/08/indianapolis-police-shootings-mayor-hogsett-asks-fbi-help-probes/3095329001/>.

⁷ 18 U.S.C. 242.

⁸ U.S. Department of Justice, *Deprivation of Rights Under Color of Law*, available at <https://www.justice.gov/crt/deprivation-rights-under-color-law>.

⁹ On May 6th, a second fatal police shooting occurred just after midnight when IMPD officers shot and killed a man while investigating a burglary. According to police, the man had a rifle and shot at the officers who were responding to the call.

Josiah Bates, *Indianapolis Police Officer Shoots Man in Livestreamed Killing. Here's What to Know*, TIME, May 7, 2020, <https://time.com/5833625/indianapolis-police-shooting-sean-reed/>

¹⁰ Associated Press, *Protests rage in Indianapolis after police kill 3 in separate incidents* <https://www.latimes.com/world-nation/story/2020-05-07/protests-as-indianapolis-police-kill-3-in-separate-incidents>

¹¹ Vic Ryckaert, Justin L. Mack, & Holly V. Hays, *What we know: The police shooting of Aaron Bailey*, Indianapolis Star, June 30, 2017, <https://www.indystar.com/story/news/crime/2017/06/30/what-we-know-police-shooting-aaron-bailey/442049001/>.

¹² Shamar Walters & Alexander Smith, *Terrell Day, Indianapolis Teen Shoplifting Suspect, Dies in Police Custody*, NBC News, September 28, 2015, <https://www.nbcnews.com/news/us-news/indianapolis-teen-shoplifting-suspect-terrell-day-dies-police-custody-n434696>.

officer was captured on video punching a 17-year-old Black student in the face and stomach, after an incident at school where an officer threatened to arrest another student.¹³

Under 34 U.S.C. § 2601 (previously codified at 42 U.S.C. § 14141), DOJ is authorized to investigate police departments for patterns or practices of systemic, unconstitutional policing. Upon a finding of a pattern or practice of constitutional violations, DOJ can obtain a court order requiring law enforcement agencies to address the systemic institutional failures that produce police abuses and misconduct.¹⁴ As detailed above, IMPD has had a series of disturbing police incidents that call for immediate DOJ intervention. Indeed, in the last five years, IMPD officers have been involved in more than a dozen controversial fatal police shootings.¹⁵ Since 2011, six IMPD officers have been charged with misconduct.¹⁶ These fatal police shootings, racial profiling, and other misconduct are not the result of “a few bad apples” or one-off incidents, but rather indicate systemic problems within the department. A DOJ pattern or practice investigation is critical for vindicating the constitutional rights of Indianapolis’ residents.

DOJ Must Reconsider its Approach to Systemic Policing Practices Nationally

As we request federal investigations into the fatal police shooting of Mr. Reed and IMPD’s policing practices, we are concerned that this request will be subject to a decision-making process that ignores the authority given to DOJ. Under the current administration, the DOJ has abdicated its responsibility of local police oversight and accountability. On November 7, 2018, then Attorney General Jeff Sessions issued a policy that sets unprecedented barriers for DOJ attorneys to pursue pattern or practice investigations and to negotiate settlement agreements and consent decrees.¹⁷ Attorney General Sessions was clear that he wanted to “avoid harmful federal intrusion in the daily work of local police,”¹⁸ despite the racially-biased and unconstitutional practices that the DOJ’s past pattern or practice investigations, including under the Bush administration, have repeatedly uncovered. The DOJ has maintained the Sessions policy, and signaled support for law enforcement to the detriment of communities impacted by police violence with statements like communities “have to start showing, more than they do, the respect and support that law enforcement deserves. And if communities don’t give that support and respect, they may find themselves without the police protection they need.”¹⁹ This DOJ is also

¹³ *Video shows Indianapolis police officer punching student*, Wane.com, September 5, 2019, <https://www.wane.com/news/indiana/video-shows-indianapolis-police-officer-punching-student/>.

¹⁴ 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>.

¹⁵ Tim Evans, *Officer-involved shootings: Here’s a list of fatal encounters with IMPD*, Indianapolis Star, May 7, 2020, <https://www.indystar.com/story/news/crime/2020/05/07/indianapolis-police-shootings-heres-list-recent-fatal-encounters/3090337001/>.

¹⁶ Vic Ryckaert & Ryan Martin, *When officers are charged—and when they aren’t—with alleged crimes while on-duty*, Indianapolis Star, September 21, 2019, <https://www.indystar.com/story/news/crime/2019/09/18/when-officers-and-arent-charged-alleged-duty-crimes/2350710001/>.

¹⁷ 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, November 7, 2018, <https://www.justice.gov/opa/pressrelease/file/1109621/download>.

¹⁸ Jefferson B. Sessions, *Jeff Sessions: ‘Avoid harmful federal intrusion’* <https://www.usatoday.com/story/opinion/2017/04/17/jeff-sessions-avoid-harmful-federal-intrusion-editorials-debates/100579848/>.

¹⁹ Jennifer Rubin, *What to do with an attorney general who disdains justice*, Washington Post, December 5, 2019, <https://www.washingtonpost.com/opinions/2019/12/05/bar-should-hold-barr-accountable/>.

advancing a Presidential Commission on Law Enforcement and the Administration of Justice, comprised exclusively of law enforcement, with no representation from civil rights and civil liberties organizations, academia, or the defense bar.²⁰ The Commission has also failed to acknowledge the racially discriminatory practices that have infected police departments across the country for centuries.²¹

DOJ must change its approach to oversight and accountability of state and local policing. DOJ provides millions of congressionally appropriated dollars to state and local law enforcement each year, which should be conditioned on the adoption of policies and practices that promote 21st Century policing and increase community trust. Congress has also provided DOJ with statutory authority to conduct federal civil rights and pattern or practice investigations. DOJ's current policies and practices around 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."²² In the wake of the spate of fatal policing shootings, including Mr. Reed's, the need for DOJ oversight of local departments is clear. Federal intervention promotes public safety and the rule of law by ensuring law enforcement agencies correct unconstitutional patterns or practices that harm police legitimacy in the eyes of the public. DOJ can and should use its authority to investigate and sue law enforcement agencies and enter into federal agreements. DOJ should not only use these tools to intervene with IMPD, but with other departments throughout the country that are engaged in unconstitutional police practices.

Conclusion

DOJ must take the necessary actions to ensure full and real accountability of local law enforcement agencies engaged in conduct that continues the dehumanization of Black people across America. With respect to the IMPD involvement in Mr. Reed's death, we again ask that DOJ open a federal civil rights investigation into the involved officers and pursue a pattern or practice investigation of IMPD. Finally, we ask that DOJ reconsider its approach to addressing systemic constitutional violations by police departments nationally. To follow up, please contact Kanya Bennett of the American Civil Liberties Union at kbennett@aclu.org and Sakira Cook at the Leadership Conference on Civil and Human Rights at cook@civilrights.org.

Sincerely,

American Civil Liberties Union
The Leadership Conference on Civil and Human Rights

²⁰ Tom Jackman, *NAACP Legal Defense Fund sues national policing commission*, May 8, 2020, <https://www.washingtonpost.com/crime-law/2020/05/08/naACP-legal-defense-fund-sues-national-policing-commission/>.

²¹ *Id.*

²² See, e.g., The Leadership Conference, "*Sessions Gutted Key Tool for Department of Justice to Fix Unconstitutional Conduct*," 8 Nov. 2018, <https://civilrights.org/2018/11/08/sessions-gutted-key-tool-for-department-of-justice-to-fix-unconstitutional-conduct/>