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June 5, 2020

William P. Barr
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Barr,

Over the past ten days, thousands of Americans all over the country have participated in public demonstrations to register their pain and outrage at the police killing of George Floyd, and at the shameful failure of our government and our society to address the scourge of police brutality directed at Black men, women, and children. In Washington, DC, thousands of heavily armed law enforcement and military personnel have been deployed by the federal government in response to the protests. Some of the personnel who have been deployed to engage with the public and with protesters are operating without visible badges or insignia displaying their names, identification numbers, or the agencies or branches with which they are affiliated.[1] Some of them have refused to supply their affiliation and identification information even when asked. We write to demand that you direct all personnel under your supervision or control to discontinue these practices immediately.

These practices, which are ordinarily associated with the security forces of rights-abusing regimes, raise an array of serious concerns. They contribute to public mistrust of law enforcement and of the government more broadly.

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[1] Philip Bump, *A Dangerous New Factor in an Uneasy Moment: Unidentified Law Enforcement Officers*, Wash. Post (June 4, 2020), https://perma.cc/F4SL-XR27; Zolan Kanno-Youngs, *Unidentified Federal Police Prompt Fears Amid Protests in Washington*, N.Y. Times (June 4, 2020), https://perma.cc/8FAF-3249; Jordan Fischer, *Unmarked, Armed Riot Officers Seen Around D.C. Won't Say What Agency They Are From*, WUSA 9 (June 4, 2020), https://perma.cc/K5VE-DPYC.

They intimidate and instill fear in members of the public, and discourage the exercise of expressive and associational rights. They undermine the legitimacy of whatever demands these armed personnel make of the citizens with whom they interact. They frustrate accountability, because protesters and members of the public cannot know whom to hold responsible when these personnel engage in conduct that is abusive or unlawful. And by guaranteeing impunity, these practices enable discrimination, gratuitous violence, and other lawless behavior.

These practices are also unconstitutional. They violate the First Amendment because they are designed to chill protected expression and assembly and will have the direct and foreseeable effect of doing so, and because they lack any justification. *See, e.g.*, *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 64–72 (1963). They violate the public's First Amendment right of access, because the information that is being concealed is ordinarily made available to the public in free societies, including ours, and because this information is a predicate to enforcing civil rights. *See Press-Enter. Co. v. Superior Court of Ca. for Riverside Cty.*, 478 U.S. 1, 8 (1986) (establishing a First Amendment right of access where the relevant record has "historically been open to the press and general public" and where "public access plays a significant positive role in the functioning of the particular process in question"); *Hartford Courant Co. v. Pellegrino*, 380 F.3d 83, 93 (2d Cir. 2004) (establishing a right of access to records that "endow the public and press with the capacity to exercise their rights guaranteed by the First Amendment").[2] They also raise serious due process concerns under the Fifth Amendment, because protesters cannot know whether they must comply with orders directed at them if they cannot confirm that the orders are being issued by agents of the government.

[2] The Department itself has recommended to local police departments that they make officers' identifying information publicly visible. For example, a 2017 consent decree supervised by the Department required the Baltimore Police Department to ensure that "officers will provide their name and badge number upon request." Consent Decree at 113-14, *United States v. Police Dep't of Baltimore*, No. 1:17-cv-00099-JKB (D. Md. Jan. 12, 2017), https://perma.cc/J3KN-87PV. Likewise, in 2014, the Department reminded the Ferguson Police Department that officers should wear name plates while in uniform, as this visibility is a "basic component of transparency and accountability" and a "near-universal requirement of sound policing practices." Letter from Christy E. Lopez, Deputy Chief, Civil Rights Division, Special Litigation Section, U.S. Dep't of Justice, to Thomas Jackson, Police Chief, City of Ferguson (Sept. 23, 2014), https://perma.cc/V9LE-WJZ7. Moreover, in Washington, DC, police are generally required by law to wear and display their badges—even while in riot gear. D.C. Code § 5–331.09 (2020), https://perma.cc/G9K6-9VTM.

In light of the foregoing, we ask you to immediately direct all personnel under your supervision or control deployed to police or monitor public protests, or to guard government property, to display their identifying information—including their names, identification numbers, insignias, and agency affiliations—in a manner plainly visible to members of the public. We also ask that you inform us of the measures you or your subordinates take to implement this direction. We would appreciate a response to this letter no later than Wednesday, June 10, 2020.

Sincerely,

Jameel Jaffer
Alex Abdo
Carrie DeCell
Leena Charlton
Meenakshi Krishnan