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May 13, 2020

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

Eric Dreiband
Assistant Attorney for the Civil Rights Division
U.S. Deputy of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Barr and Assistant Attorney General Dreiband,

On behalf of The Leadership Conference on Civil and Human Rights, a coalition charged by its diverse membership of more than 200 national organizations to promote and protect the civil and human rights of all persons in the United States, and the ## organizations listed below, we urge the U.S. Department of Justice (DOJ) to open a full and thorough hate crimes investigation into the horrific killing of Ahmaud Arbery. We also call for a federal civil rights pattern or practice investigation into the local district attorneys, including the Office of the District Attorney of the Brunswick Judicial Circuit and the Office of the District Attorney of the Waycross Judicial Circuit, as well as of the Glynn County Police Department, for systemic constitutional abuses.

On February 23, two White men, one of whom is a former Glynn County law enforcement official, stalked and killed Mr. Arbery, an African American man, while he was out for an afternoon run. Local authorities quickly concluded their investigation of Mr. Arbery's killing and failed to issue warrants for the perpetrators, despite undisputed evidence of their involvement in the murder and significant local efforts demanding law enforcement action. The Georgia Bureau of Investigation (GBI) launched an investigation two months later after a graphic video surfaced of the killing on May 5. Two days after the GBI investigation commenced, the agency concluded that "probable cause was clear" to arrest and charge Gregory McMichael and his son, Travis McMichael, with felony murder and aggravated assault for Mr. Arbery's death.¹

¹ Audrey McNamara, *Probable cause "clear" in Ahmaud Arbery case, Georgia Bureau of Investigation says*, CBS News (May 8, 2020, <https://www.cbsnews.com/news/ahmaud-arbery-probable-cause-murder-case-georgia-bureau-investigations/>)

The Department of Justice must take action under federal hate crimes laws and under its pattern and practice authority for systemic constitutional abuses.

The DOJ Must Conduct a Full Hate Crimes Investigation

The DOJ, including the FBI and the Civil Rights Division, must conduct a full investigation into Mr. Arbery's killing under federal hate crimes and conspiracy statutes. The publicly available facts, including the harrowing video documenting the intentional killing of an African-American man in broad daylight by two White men who stalked him, support opening an investigation under federal hate crimes statutes, including the Matthew Shepard and James Byrd, Jr. Hate Crimes Prevention Act, as well as federal conspiracy statutes.²

The unique and far-reaching harm of hate crimes has long been recognized by the Department of Justice and you have both publicly stated that you are re-committing the Department to vigorously investigating and prosecuting these cases.³ Federal intervention is particularly important in this case, as the state of Georgia does not have a hate crimes statute available to address crimes that target victims on the basis of race. Indeed, this is precisely the kind of case that Congress envisioned requiring a federal investigation, as any conviction under state law would necessarily leave "demonstrably unvindicated the Federal interest in eradicating bias-motivated violence."⁴

The DOJ Should Investigate the Conduct of the Local District Attorneys and the Police Department

There are sufficient grounds to open a federal civil rights pattern or practice investigation of the local prosecutors and the police department.⁵ Justification for opening an investigation in accordance with 34 U.S.C. § 12601 (previously codified at 42 U.S.C. § 14141) includes: (1) the dereliction of duty by local prosecutors and police department in failing for more than two months to thoroughly investigate this case involving the killing of a Black man by two White defendants; (2) the publicly available record of communications between the local prosecutors and the police department in this case; as well as (3) reports that these agencies have repeatedly engaged in reckless conduct that discriminates on the basis of race and gender in violation of the Constitution. The DOJ should also consider investigating these law

² 18 U.S.C. 249, 18 U.S.C. 371

³ "Attorney General William Barr and Assistant Attorney General for Civil Rights Eric Dreiband have called upon department prosecutors throughout the country to watch for hate-motivated acts of violence." (Press Release, *Federal law enforcement leaders address discrimination amid Coronavirus pandemic*, The United States Attorney's Office Northern District of Georgia (April 24, 2020), <https://www.justice.gov/usao-ndga/pr/federal-law-enforcement-leaders-address-discrimination-amid-coronavirus-pandemic>)

⁴ 18 U.S.C. 249 (b)(1)

⁵ The Violent Crime Control and Law Enforcement Act of 1994, 34 U.S.C. § 12601 (previously codified at 42 U.S.C. § 14141), and the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d ("Safe Streets Act")

enforcement agencies, including the local prosecutors and police department, for their conduct under federal conspiracy statutes.⁶

The Georgia Attorney General's decision to request that the DOJ open an investigation into the handling of the Ahmaud Arbery case reveals the depth of the problems in the local agencies initially charged with investigating and prosecuting this case and points to the pattern and practice of discriminating against people on the basis of race. The timeline and documentation of communication that accompanied the Georgia Attorney General's request raise serious questions about the conduct of the Waycross Circuit District Attorney and the Brunswick Circuit District Attorney that merit further investigation.⁷ The conduct of the Waycross Circuit District Attorney in the Arbery case was so egregious as to merit public condemnation by the National District Attorneys Association, the organization representing more than two-thirds of state and local prosecutors' offices in the country. The Association stated that the Waycross District Attorney's actions risked "compromising the just outcome of the case."⁸

And according to local advocates and community leaders, there is a pattern of these offices handling cases in a manner that discriminates on the basis of race. Community leaders point to repeated examples of these local prosecutors treating Black people differently from White people when conducting investigations and prosecutions. This includes an unsuccessful prosecution by the Waycross Circuit District Attorney's office of a Black woman in a rural county who helped a first-time voter use a voting machine. In 2018, a jury found her not guilty, and her lawyers described her case as a "racially motivated targeted prosecution."⁹

The public reports of the communication and collaboration between the local prosecutors and the Glynn County Police Department also support opening a pattern or practice investigation. The Georgia Attorney General detailed some of his concerns with these interactions in his request for a federal investigation. The fact that the Georgia Bureau of Investigation concluded in two days that there was sufficient probable cause to arrest the defendants when the Glynn County Police Department chose not to arrest the defendants for more than two months when confronted with the same evidence, should prompt an investigation into their activities on its own. And the decision not to arrest the McMichaels was just the latest in a series of decisions by the Department that present serious concerns about whether they are engaged in constitutional policing.¹⁰

⁶ See, e.g., 18 U.S.C. § 371; including conspiracy to violate federal statutes 18 U.S.C. § 242, 18 U.S.C. § 1519

⁷ Press Release, *Carr Requests DOJ to Conduct Investigation into Handling of Ahmaud Arbery Case*, Office of the Attorney General of Georgia (May 10, 2020), <https://law.georgia.gov/press-releases/2020-05-10/carr-requests-doj-conduct-investigation-handling-ahmaud-arbery-case>

⁸ Bert Roughton, Jr., *US district attorneys condemn recused prosecutor in Ahmaud Arbery case*, Atlanta Journal-Constitution (May 10, 2020), <https://www.ajc.com/news/district-attorneys-condemn-recused-prosecutor-ahmaud-arbery-case/VWV86naEbd9eprgOCSWwRJ/>

⁹ Rick Rojas, Richard Fausset and Serge F. Kovalski, *Georgia Killing Puts Spotlight on a Police Force's Troubled History*, New York Times (May 8, 2020), <https://www.nytimes.com/2020/05/08/us/glynn-county-police-ahmaud-arbery.html>

¹⁰ "Over the years, Glynn County police officers have been accused of covering up allegations of misconduct, tampering with a crime scene, interfering in an investigation of a police shooting and retaliating against fellow officers who cooperated with outside investigators." (Rick Rojas, Richard Fausset and Serge F. Kovalski, *Georgia*

The DOJ has jurisdiction to investigate and to seek injunctive relief to remedy discriminatory conduct under these circumstances. This jurisdiction arises from both the Violent Crime Control and Law Enforcement Act of 1994, 34 U.S.C. § 12601, which allows for an investigation of systemic police and prosecutorial misconduct, and the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d ("Safe Streets Act"), which authorizes investigations of discriminatory behavior by jurisdictions receiving federal funds. Here, the DOJ should focus its investigation on whether local prosecutors and the police department engaged in a pattern or practice of race discrimination in violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution and relevant statutes.

Conclusion

At a time when we are seeing a spike in hate crimes, the role of the Civil Rights Division in working with the FBI to investigate and prosecute hate crimes cases and ensure constitutional enforcement of the law by state and local law enforcement agencies is more important than ever. The DOJ has publicly acknowledged the real and growing threat of White supremacy and White nationalism in the United States.¹¹ The murder of Ahmaud Arbery and actions of the local district attorneys and police department warrant the DOJ's action. This terrifying violence is not new; it is part of the continuing dehumanization of Black people across America. We cannot fight the racism, hate, and impunity that threaten the lives of Black people and other people of color unless the Department takes the necessary actions to ensure full and real accountability. Please contact Becky Monroe, monroe@civilrights.org, if you have questions.

Sincerely,

Killing Puts Spotlight on a Police Force's Troubled History, New York Times (May 8, 2020), <https://www.nytimes.com/2020/05/08/us/glynn-county-police-ahmaud-arbery.html>

¹¹ Erin Donaghue, *Racially-motivated violent extremists elevated to "national threat priority," FBI director says*, CBS News (Feb 5, 2020), <https://www.cbsnews.com/news/racially-motivated-violent-extremism-isis-national-threat-priority-fbi-director-christopher-wray/>