



July 11, 2024

The Honorable Merrick Garland
 Attorney General of the United States
 U.S. Department of Justice
 950 Pennsylvania Avenue, NW
 Washington, D.C. 20530-00

The Honorable Miguel Cardona
 U.S. Department of Education
 400 Maryland Avenue, SW
 Washington, D.C. 20202

RE: Renewed Request for Investigation of Law Enforcement and University Responses to Peaceful Campus Protests

Dear Attorney General Garland and Secretary Cardona:

On behalf of the undersigned civil and human rights organizations, we write¹ to urge the Department of Justice (DOJ) to investigate the allegations of law enforcement abuses—in response to peaceful protests² occurring in cities and on university campuses across the country—that may be in violation of federal laws. We likewise urge the Department of Education

¹ This letter follows and expands on the Legal Defense Fund’s (LDF) letter of May 2, 2024, to include additional information and signatories.

² Peaceful protests are nonviolent protests via expressive conduct, including peaceful acts of civil disobedience. LDF condemns violence of all kinds and supports constructive nonviolent solutions to public safety.

(ED) to take immediate action to address possible civil rights violations committed by university officials in connection with peaceful protests on campuses. Nonviolent protests are part of a longstanding tradition of activism in the United States to express concern and outrage for civil and human rights violations, press for policy change, and push officials, including government actors and university officials, to adhere to the ideals and principles of our multiracial democracy. Many current peaceful protesters, including students, faculty, and other stakeholders, are similarly exercising their constitutional rights by expressing their condemnation of the extreme and escalating violence in Gaza.

In recent months, thousands of campus and other protesters have been arrested and detained—sometimes with egregious use of force—by officers from university, state, and local police departments, some of whom university administrators have called to break up peaceful protests. A recent review found that 97 percent of on-campus protests in support of Gaza and the Palestinian people have been peaceful.³ This is consistent with the racial justice protests of 2020 of which researchers determined 93 percent were peaceful.⁴ Yet, law enforcement agencies have repeatedly deployed militarized force and tactics on campus and other protesters to disband pro-Palestinian protests, as they did in 2020 in response to racial justice protests. These actions require immediate investigation by DOJ and, as they pertain to educational institutions, by ED to ensure that the federal and constitutional rights of all protesters have been and remain protected. Additional researchers documented that 95 percent of 1,090 recent campus protests were peaceful.⁵ Yet, in 200 cases, law enforcement intervened when no violent or destructive activity by protesters was reported.⁶ In some cases, law enforcement responded with documented, egregious violence. In 24 incidents across 22 institutions, law enforcement agencies used “less lethal” weapons such as beanbag rounds, tear gas, and/or pepper spray, and in at least 11 incidents, they used batons.⁷ In at least one case in Los Angeles, law enforcement agencies failed to protect peaceful protesters from attempted or actualized harm by violent counter-protesters and operatives.

Individuals associated with white nationalist groups, including the “Proud Boys,” have sought to capitalize on the media attention surrounding these protests to foment hate, violence, and disruption, including characterizing pro-Palestinian students and faculty as un-American, and have attacked pro-Palestinian protesters.⁸ This conduct—and both the action and inaction by law enforcement—warrants immediate investigation by DOJ.

³ Bianca Ho & Kieran Doyle, *US Student Pro-Palestine Demonstrations Remain Overwhelmingly Peaceful*, ACLED (May 10, 2024), <https://acleddata.com/2024/05/10/us-student-pro-palestine-demonstrations-remain-overwhelmingly-peaceful-aced-brief/>.

⁴ Roudabeh Kishi & Sam Jones, *Demonstrations and Political Violence in America: New Data for Summer 2020*, ACLED (Sept. 3, 2020), <https://acleddata.com/2020/09/03/demonstrations-political-violence-in-america-new-data-for-summer-2020/>.

⁵ BRIDGING DIVIDES INITIATIVE, PRINCETON UNIV., ANALYSIS OF U.S. CAMPUS ENCAMPMENTS RELATED TO THE ISRAEL-PALESTINE CONFLICT (May 2024), <https://bridgingdivides.princeton.edu/updates/2024/issue-brief-analysis-us-campus-encampments-related-israel-palestine-conflict> [hereinafter U.S. CAMPUS ENCAMPMENTS ANALYSIS].

⁶ *Id.*

⁷ *Id.*

⁸ Ali Winston, *Why far-right groups are disrupting US campus protests: ‘When there’s so much attention, they show up,’* GUARDIAN (May 10, 2024), <https://www.theguardian.com/us-news/article/2024/may/10/college-campus-protests-far-right>; U.S. CAMPUS ENCAMPMENTS ANALYSIS, *supra* note 5.

While we recognize that municipalities, university officials, and law enforcement agencies are charged to protect both protesters and their larger respective communities and must carefully navigate these complexities, the civil and human rights of protesters, and the constitutional protections of freedom of expression and assembly, cannot be transgressed. The civil and human rights of all students on university campuses, including protesters, must be protected. Likewise, no student—regardless of their racial, ethnic, religious, or national identity⁹—should be excluded, harassed, or intimidated to limit their access to educational opportunities or facilities. Universities are capable of balancing these interests without violating the civil and human rights of their students and faculty.

I. DOJ Should Scrutinize Law Enforcement Responses to Peaceful Campus and Other Protests, including in New York City, Austin, Atlanta, and Los Angeles Specifically, for Possible Federal Civil Rights Violations.

On April 18, 2024, Columbia University President Minouche Shafik called upon the New York City Police Department (NYPD) to remove campus protesters from a peaceful encampment. The officers who participated in this action included members of its notorious Strategic Response Group (SRG),¹⁰ which is already the subject of a settlement agreement with the New York Attorney General, the New York Civil Liberties Union, and the Legal Aid Society of New York for its abusive conduct during the racial justice protests in 2020.¹¹ SRG officers have repeatedly used excessive force, arrests, and dangerous tactical strategies, such as kettling, against demonstrators as they exercise their First Amendment rights.¹² Despite being under a court-ordered settlement agreement, NYPD and its SRG used militarized force at multiple university campuses in New York City.

NYPD officers arrested more than 100 people at Columbia on April 18 and 120 people at New York University (NYU) on April 22.¹³ During NYPD's response at NYU, a legal observer and journalist reported being pepper-sprayed.¹⁴ On April 30, hundreds of NYPD officers in full riot gear arrested 282 people—173 at City College and 109 at Columbia.¹⁵ On May 1, NYPD officers dressed in riot gear arrested 15 peaceful protesters who had set up an encampment in Fordham

⁹ No students should be subjected to intimidation, discrimination, or harassment whether anti-Muslim, anti-Arab, antisemitic, or other forms of hate.

¹⁰ Allie Griffin, *NYPD arrests over 100 protesters at NYU, clears out anti-Israel encampment on campus*, N.Y. POST (Apr. 22, 2024), <https://nypost.com/2024/04/22/us-news/nypd-cops-in-riot-gear-arrest-dozens-of-nyu-students-faculty-at-anti-israel-encampment-on-campus/>.

¹¹ Press Release, Office of the New York State Attorney General, *Attorney General James, The Legal Aid Society, and NYCLU Announce Agreement with NYPD to Reform Policing of Protests* (Sept. 5, 2023), <https://ag.ny.gov/press-release/2023/attorney-general-james-legal-aid-society-and-nyclu-announce-agreement-nypd>.

¹² Ali Watkins, *An Unprepared N.Y.P.D. Badly Mishandled Floyd Protests, Watchdog Says*, N.Y. TIMES (Dec. 18, 2020), <https://www.nytimes.com/2020/12/18/nyregion/nypd-george-floyd-protests.html>.

¹³ *Where campus protests have led to arrests across the U.S.*, WASH. POST (Apr. 29, 2024), <https://www.washingtonpost.com/education/2024/04/25/university-protests-arrests-locations/>.

¹⁴ Noah Hurowitz, *NYU Has NYPD Arrest and Pepper-Spray Protesters at Pro-Palestine Student Encampment*, HELLGATE NYC (Apr. 23, 2024), <https://hellgatenyc.com/nyu-nypd-gaza-solidarity-encampment>.

¹⁵ *Mayor Eric Adams defends NYPD's actions to arrest protesters in NYC*, ABC7 N.Y. (May 1, 2024), <https://abc7ny.com/columbia-protests-mayor-eric-adams-defends-nypds-actions-to-arrest-pro-palestinian-demonstrators-in-nyc/14751040/>.

University's Lincoln Center.¹⁶ NYPD officers arrested 43 people at an encampment in the New School on May 3,¹⁷ and 50 protesters in an encampment at the Fashion Institute of Technology on May 8.¹⁸ This police escalation continued off campus over the weekend of May 19, where journalists filmed NYPD officers and supervisors punching protesters who were lying prone on the ground despite the presence of multiple officers to control them.¹⁹

Universities across the country have followed Columbia's example and turned to state and local law enforcement to force the removal of hundreds of students, faculty, and others engaged in peaceful, pro-Palestinian protests on campus grounds. At the University of Texas at Austin (UT Austin), for example, Governor Abbott responded to a request from the UT Austin President and militarized the campus by deploying Texas State Troopers from the State's Department of Public Safety, alongside officers from the University of Texas Police Department and Austin Police Department, to respond to a peaceful, student-organized rally on April 24.²⁰ Outfitted in riot gear, officers arrived in vehicles, on motorcycles, on foot, and on horseback.²¹ Protest observers reported that officers quickly became aggressive towards campus protesters, pushing through the crowd and grabbing individuals to detain them.²² According to reports, the first person arrested at this protest actually attempted to facilitate the dispersal of others at the officers' orders, when law enforcement officers pushed him into another officer, who subsequently arrested him.²³ Law enforcement officers eventually arrested 57 campus protesters on misdemeanor criminal trespass charges, filling out probable cause affidavits for each individual arrested.²⁴ Charges have been dropped in all cases based on deficiencies with those probable cause affidavits that were used to justify each arrest.²⁵ In fact, a review of a handful of these affidavits revealed that officers appeared to have copied and pasted language from one

¹⁶ *15 arrested as NYPD clears protester encampment at Fordham's Lincoln Center campus*, NBC N.Y. (May 1, 2024), <https://www.nbcnewyork.com/news/local/pro-palestinian-encampment-set-up-inside-fordham-at-lincoln-center-campus/5373755/>.

¹⁷ Annie McDonough, *Tracking campus protests in New York*, CITY & STATE N.Y. (May 15, 2024), <https://www.cityandstateny.com/politics/2024/05/tracking-campus-protests-new-york/396318/>.

¹⁸ Ramsey Khalifeh, *FIT protesters surprised by NYPD's crackdown on their pro-Palestinian encampment*, GOTHAMIST (May 8, 2024), <https://gothamist.com/news/fit-protesters-surprised-by-nypds-crackdown-on-their-pro-palestinian-encampment>.

¹⁹ Christopher Maag, *At Chaotic Rally in Brooklyn, Police Violently Confront Protesters*, N.Y. TIMES (May 19, 2024), <https://www.nytimes.com/2024/05/19/nyregion/nypd-protest-brooklyn-gaza.html?smid=em-share>.

²⁰ Stephen Simpson, *Campuses across Texas had pro-Palestinian demonstrations. Why did only UT-Austin crack down?*, TEX. TRIB. (Apr. 26, 2024), <https://www.texastribune.org/2024/04/26/ut-austin-student-protest-arrests-texas/>.

²¹ *Id.*

²² Lily Kepner & Skye Seipp, *What happened at pro-Palestinian protest at UT-Austin? Here's the timeline of events*, AUSTIN AM.-STATESMAN (Apr. 25, 2024), <https://www.statesman.com/story/news/local/2024/04/25/pro-palestine-protest-ut-austin-student-protests-arrest-timeline-of-events/73448241007/>.

²³ Bayliss Wagner et al., *Family, supporters of arrested UT-Austin pro-Palestine protesters waited hours outside jail*, AUSTIN AM.-STATESMAN (Apr. 26, 2024), <https://www.statesman.com/story/news/politics/state/2024/04/25/pro-palestine-protest-ut-austin-arrest-families-supporters-wait-hours-for-release/73451194007/>.

²⁴ Simpson, *supra* note 20; Skye Seipp, *Charges dropped against all 57 arrested in connection to UT-Austin pro-Palestinian protest*, AUSTIN AM.-STATESMAN (Apr. 26, 2024), <https://www.statesman.com/story/news/local/2024/04/26/ut-austin-pro-palestinian-protest-charges-dropped-against-all-57-people-arrested/73468467007/>.

²⁵ Simpson, *supra* note 20.

affidavit to another.²⁶ Among those arrested was a photojournalist, who was pushed into a peace officer while covering the event, but charged with criminal trespass and assault of a peace officer, a second degree felony.²⁷ Those charges were dropped, only for the photojournalist to be charged with misdemeanor charges of “impeding a public officer” and assault the same day.²⁸ Nearly a week after these events, law enforcement deployed pepper spray and flash bang explosives to disperse crowds on the UT Austin campus, and arrested another 79 protesters.²⁹

In Atlanta, Georgia State Troopers and Motor Carrier Officers responded to a request for assistance by the Emory Police Department and Atlanta Police Department (APD) to remove campus demonstrators from a peaceful protest at Emory University on April 25, 2024.³⁰ Students reported witnessing Georgia State Troopers enclose on the encampment, deploying tear gas, rubber bullets, and pepper balls into the crowd³¹ and pinning and tackling protesters to the ground before restraining their hands behind their backs with zip ties or handcuffs.³² Notably, the use of tear gas is prohibited in warfare under multiple international agreements, yet remains unregulated for domestic use in the United States.³³ Video footage shows two state troopers and an APD officer pinning a Black male protester to the ground, with one state trooper repeatedly tasing the protester while the APD officer turned him on his stomach to handcuff him behind his back.³⁴ Even after this protester was partially handcuffed with wrists restrained, the state trooper continued to tase him.³⁵

²⁶ *Id.*

²⁷ Abigail Jones, *Austin photojournalist faces felony charge after arrest during UT protest, affidavit says*, KXAN (Apr. 29, 2024), <https://www.kxan.com/news/local/austin/austin-photojournalist-faces-felony-charge-after-arrest-during-ut-protest-affidavit-says/>; *SPJ demands Texas Department of Public Safety drop charges and arrest warrant against Fox 7 News Photojournalist*, SOC’Y OF PRO. JOURNALISTS (Apr. 29, 2024), https://www.spj.org/news.asp?REF=3020&utm_source=linkedin&utm_medium=social&utm_campaign=societyofprofessionaljournalists&utm_content=pressreleases#sq_hp8g9dijod.

²⁸ *Fox 7 Austin photojournalist faces misdemeanor charges after felony charges dropped*, COMM. TO PROTECT JOURNALISTS (May 1, 2024), <https://cpj.org/2024/05/fox-7-austin-photojournalist-faces-misdemeanor-charges-after-felony-charges-dropped/>.

²⁹ Stephen Simpson et al., *79 arrested amid second crackdown on UT-Austin campus*, TEX. TRIB. (Apr. 30, 2024), <https://www.texastribune.org/2024/04/30/ut-austin-protest-arrests/>.

³⁰ Press Release, Ga. Dep’t of Pub. Safety, *DPS Responds to Emory University* (Apr. 25, 2024), <https://dps.georgia.gov/press-releases/2024-04-25/dps-responds-emory-university>.

³¹ Martha Dalton, *Legal groups say repercussions for protesters are worse in Georgia*, ATLANTA J.-CONST. (Apr. 29, 2024), <https://www.ajc.com/education/legal-groups-say-repercussions-for-protesters-are-worse-in-georgia/XUMSPWSEQZH4ZFN2CHERCDCU/>; *At least 28 arrested after protesters set up encampments on Emory University campus*, WSB-TV ATLANTA (Apr. 26, 2024), <https://www.wsbtv.com/news/local/protesters-leave-emory-universitys-campus-after-police-use-tear-gas-dozens-arrested/HHQGIUSRRCVTNAE6ZMKIESUFM/>; Amanda Yen, *Arrests Get Violent as Cops Deploy Tasers and Tear Gas on Campus Protesters*, DAILY BEAST (Apr. 25, 2024), <https://www.thedailybeast.com/arrests-get-violent-as-cops-deploy-tasers-and-tear-gas-on-campus-protesters>.

³² Billy Heath (@BillyHeathFOX5), X (Apr. 25, 2024, 3:43 PM), <https://twitter.com/BillyHeathFOX5/status/1783582734348104178>.

³³ Jessica Moss, *Tear Gas and the Politics of Protest Policing*, COUNCIL ON FOREIGN RELS. (Aug. 26, 2020), <https://www.cfr.org/in-brief/tear-gas-and-politics-protest-policing>.

³⁴ *Protester shot with Taser during Emory protest*, FOX 5 ATLANTA (Apr. 25, 2024), <https://www.fox5atlanta.com/video/1446610>.

³⁵ *Id.*

At the University of California Los Angeles' (UCLA) campus, the pro-Palestinian encampment was attacked by at least 100 outside agitators.³⁶ The attackers sprayed protesters with chemical irritants, hit them with wooden boards, punched and kicked them, and shot fireworks into the crowd of students and supporters huddled behind umbrellas and wooden planks.³⁷ One of these attackers sprayed a local journalist covering the event with pepper spray.³⁸ One witness called 911 eleven times throughout the events.³⁹ Rabbi Chaim Seidler-Feller, UCLA Hillel's Director Emeritus, who saw these events take place live on the news, called 911 around midnight, concerned that someone would get killed.⁴⁰ Throughout these events, the Los Angeles Police Department, the California Highway Patrol, and campus security did not stop the violence.⁴¹ Videos showed police assembling near the encampment, but holding back for an hour while the violence raged.⁴² This is in stark contrast to the following evening, when law enforcement returned in body armor to swiftly dismantle the camp and arrest over 200 protesters at the UCLA encampment, with at least one officer seen on video shooting rubber bullets into the crowd.⁴³

The examples cited above are by no means a complete accounting of inappropriate or potentially unlawful law enforcement conduct. Additional examples abound. For example, Muslim women have reported officers forcibly removing their hijabs during arrests in Arizona,⁴⁴ Austin,⁴⁵ Columbus,⁴⁶ and Tennessee.⁴⁷ In Missouri, an Arab-American professor from Southern Illinois University Edwardsville was arrested at Washington University in St. Louis,

³⁶ Blake Ellis et al., *Unmasking counterprotesters who attacked UCLA's pro-Palestine encampment*, CNN (May 16, 2024), <https://www.cnn.com/2024/05/16/us/ucla-student-protests-counterprotesters-invs/index.html>.

³⁷ *Id.*

³⁸ *Id.*

³⁹ Jon Swaine et al., *Despite warnings of violence at UCLA, police didn't step in for over 3 hours*, WASH. POST (May 11, 2024), <https://www.washingtonpost.com/investigations/2024/05/11/ucla-protests-police-inaction-fights/>.

⁴⁰ *Id.*

⁴¹ Regan Morris & Sam Cabral, *UCLA Clashes: Police Criticized for 'delayed' response to violence*, BBC (May 2, 2024), <https://www.bbc.com/news/world-us-canada-68937775>; Dani Anguiano, *Police arrest man suspected of assaulting pro-Palestinian demonstrators at UCLA*, GUARDIAN (May 24, 2024), <https://www.theguardian.com/us-news/article/2024/may/24/ucla-arrest-man-assault-demonstrators-palestine>.

⁴² Swaine et al., *supra* note 39.

⁴³ Matthew Ormseth et al., *UCLA struggles to recover after 200 arrested, pro-Palestinian camp torn down*, L.A. TIMES (May 1, 2024), <https://www.latimes.com/california/story/2024-05-01/la-me-ucla-camp-police>.

⁴⁴ Dave Biscobing, *Women speak out after police forcibly removed hijabs at ASU protest*, ABC15 (Apr. 30, 2024), <https://www.abc15.com/news/local-news/investigations/women-speak-out-after-police-forcibly-removed-hijabs-at-asu-protest>.

⁴⁵ Johann Castro & Laura Sather, *Rights of female students violated in Travis County Jail, according to CAIR; Travis County Sheriff's Office responds*, KVUE ABC (May 2, 2024), <https://www.kvue.com/article/news/local/travis-county-jail-accused-violating-rightst-female-detainees-after-university-of-texas-protest/269-299c7163-f99e-49cf-bd93-7c4e47be3a24>.

⁴⁶ Bailey Gallion, *Ohio State pro-Palestine protesters arrested in demonstration say police removed hijabs*, COLUMBUS DISPATCH (May 8, 2024), <https://www.dispatch.com/story/news/2024/05/08/ohio-state-palestine-protesters-say-police-removed-hijabs-violated-religious-rights/73544331007/>.

⁴⁷ Angela Dennis, *Muslims say religious freedom violated by sheriff's office after University of Tennessee arrest*, KNOX NEWS (May 20, 2024), <https://www.knoxnews.com/story/news/local/2024/05/20/knox-county-jail-violated-religious-rights-muslim-hijab-university-of-tennessee-arrest/73721772007/>.

and hospitalized with broken ribs and a broken hand due to excessive force used by law enforcement during and following the arrest.⁴⁸ At Yale University, four protesters were violently arrested and officers tackled at least one demonstrator and held that person by the neck during a rally.⁴⁹ One of the arrested protesters, a student marshal trained to be a liaison between the demonstrators and police, was seen on camera calmly asking officers to allow the demonstrators to disperse before she too was grabbed and handcuffed.⁵⁰ At Indiana University's campus, law enforcement snipers were spotted on top of various campus buildings.⁵¹

Even though 97 percent of pro-Palestinian protests have been peaceful,⁵² and even “in cases where student demonstrators have gathered unopposed, police have intervened against pro-Palestine demonstrations more than five-and-a-half times as often as pro-Israel demonstrations.”⁵³ These data suggest that law enforcement agencies are exhibiting a pattern of targeting and responding more aggressively to peaceful pro-Palestinian protests. In addition, freedom of the press is one of the core foundations of the First Amendment, and journalists must be able to cover events without fear of retaliation by police. It is, therefore, imperative that the Department of Justice thoroughly and comprehensively review law enforcement conduct in response to peaceful campus and other protests nationwide to evaluate whether university officials and law enforcement agencies have been engaged in viewpoint or other unlawful discrimination in their responses to protests and to determine whether they have otherwise violated any federal laws.

II. DOJ Must Protect the Rights of Protesters from Unwarranted Surveillance.

Unwarranted surveillance of political activists has long been a concern, especially for certain racial or ethnic communities. Since September 11, 2001, for example, many Arab-American, South Asian, and Muslim communities have been subject to unwarranted surveillance and scrutiny from local and federal law enforcement.⁵⁴ Police have paid community members to serve as informants and report on their neighbors.⁵⁵ In addition, the U.S. Attorney General granted the Federal Bureau of Investigation (FBI) increasingly broad discretion to gather intelligence on Arab-American and Muslim communities.⁵⁶ Despite the decades that have passed, many of these guidelines still remain in place.⁵⁷ More recently, the FBI and DOJ's

⁴⁸ Moss, *supra* note 33.

⁴⁹ Nathaniel Rosenberg, *Yale police violently arrest four pro-Palestine protesters*, YALE DAILY NEWS (May 2, 2024), <https://yaledailynews.com/blog/2024/05/02/yale-police-violently-arrest-four-pro-palestine-protesters/>.

⁵⁰ *Id.*

⁵¹ Marissa Meador & Niki Kelly, *IU protests and police actions draw criticism, defense*, IND. CAP. CHRON. (Apr. 29, 2024), <https://indianacapitalchronicle.com/2024/04/29/iu-protests-and-police-action-draw-criticism-defense/>.

⁵² Ho & Doyle, *supra* note 3.

⁵³ *Id.*

⁵⁴ Saher Khan & Vignesh Ramachandran, *Post-9/11 surveillance has left a generation of Muslim Americans in a shadow of distrust and fear*, PBS (Sept. 16, 2021), <https://www.pbs.org/newshour/nation/post-9-11-surveillance-has-left-a-generation-of-muslim-americans-in-a-shadow-of-distrust-and-fear>; *Feds Deliberately Targeted BLM Protesters to Disrupt The Movement, A Report Says*, NPR (Aug. 20, 2021), <https://www.npr.org/2021/08/20/1029625793/black-lives-matter-protesters-targeted>.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

“China Initiative” led to surveillance and harassment of individuals of Chinese heritage. Allegedly focused on economic espionage, the initiative expanded into numerous baseless prosecutions against academics.⁵⁸ Nearly 90 percent of defendants charged were of Chinese heritage.⁵⁹ The federal government has applied many of the same tactics from the post-September 11 era to surveillance now.

Black communities have also been subject to unwarranted scrutiny and surveillance by federal authorities. Declassified reports from 2020 show that the FBI used their surveillance authority from Section 702 of the Foreign Intelligence Surveillance Act to investigate whether protesters involved in the racial justice protests following the murder of George Floyd had ties to terrorists, despite lacking “any specific potential connections to terrorist related activity.”⁶⁰ The FBI even used one of its most advanced spy planes to monitor Black Lives Matter protests in D.C. in 2020 and Baltimore, Maryland in 2015.⁶¹

Civil rights groups have documented an increase in FBI investigations and questioning of pro-Palestinian activists and Palestinian, Arab, and Muslim-Americans,⁶² like other activists and members of the Arab and Muslim-American communities before them.⁶³ Given the Department’s documented history of abusing its surveillance powers,⁶⁴ and the resulting disproportionate harm on communities of color, DOJ must ensure and demonstrate to the public that students and other pro-Palestinian protesters are not being subjected to unwarranted surveillance for participating in peaceful protests or expressing their opinions on social media.

III. ED Should Evaluate Whether Universities’ Responses to Campus Protests Violated Their Civil Rights Obligations Under Title VI of the Civil Rights Act of 1964.

ED’s Office for Civil Rights (OCR) must investigate colleges and universities to determine whether their actions in response to campus protests violated their legal obligations under Title VI of the Civil Rights Act of 1964. Schools receiving federal financial assistance are

⁵⁸ Eileen Guo, Jess Aloe & Karen Hao, *The US crackdown on Chinese economic espionage is a mess. We have the data to show it.*, MIT TECH. REV. (Dec. 2, 2021), <https://www.technologyreview.com/2021/12/02/1040656/china-initiative-us-justice-department/>.

⁵⁹ *Id.*

⁶⁰ Maggie Miller, *FBI misused surveillance authorities to investigate Black Lives Matter Protesters*, POLITICO (May 19, 2023), <https://www.politico.com/news/2023/05/19/fbi-surveillance-black-lives-matter-protesters-00097924>.

⁶¹ Dominic-Madori Davis, *FBI reportedly used top spy plane to monitor Black Lives Matter protests*, BUS. INSIDER (June 21, 2020), <https://www.businessinsider.com/fbi-used-spy-plane-to-monitor-black-lives-matter-protests-2020-6>.

⁶² *Rights group report spike in FBI interrogation of pro-Palestine activists*, MIDDLE E. MONITOR (Jan. 25, 2024), <https://www.middleeastmonitor.com/20240125-rights-group-report-spike-in-fbi-interrogation-of-pro-palestine-activists/>.

⁶³ *Id.*

⁶⁴ U.S. COMM’N ON C.R., FEDERAL CIVIL RIGHTS ENGAGEMENT WITH ARAB AND MUSLIM AMERICAN COMMUNITIES POST 9/11 (2014), https://www.usccr.gov/files/pubs/docs/ARAB_MUSLIM_9-30-14.pdf (“Ethnic, religious and racial profiling has led to the wide-spread singling out of Arabs and American Muslims by . . . the Federal Bureau of Investigation”); *ACLU EYE on the FBI Alert – Mosque Outreach for Intelligence Gathering*, ACLU (Mar. 27, 2012), <https://www.aclu.org/documents/aclu-eye-fbi-alert-mosque-outreach-intelligence-gathering?redirect=aclu-eye-fbi-alert-mosque-outreach-intelligence-gathering>.

legally obligated to protect all students from hostile environments⁶⁵ and differential discriminatory treatment based on, among other protected categories, shared ancestry and ethnic characteristics. Schools violate their federal civil rights obligations when they are aware of the existence of a hostile environment based on a protected characteristic and subsequently fail to take adequate steps to redress the situation, or when they engage in differential and discriminatory treatment based on a protected characteristic.

OCR should investigate whether a university's decision to call in law enforcement to respond to campus protests violates Title VI, including the possible creation of a hostile environment. Under Title VI, OCR interprets hostile environments to exist where there is "conduct (e.g., physical, verbal, graphic, or written) that is sufficiently severe, pervasive, or persistent so as to interfere with or limit the ability of an individual to participate in or benefit from the services, activities, or privileges provided by a school or college."⁶⁶ Reported accounts at Columbia, Emory, UT Austin, and UCLA raise concerns that university officials created hostile environments by inviting state and local law enforcement officers to break up peaceful campus protests. In response to these calls, local law enforcement officers and state troopers used militarized presence and tactics and deployed pepper spray, rubber bullets, and flash bang explosives on crowds of pro-Palestinian student protesters to dismantle peaceful demonstrations on campuses. Additionally, when pro-Palestinian student protesters were under violent attacks by counter-protesters at UCLA, law enforcement agencies did not interfere to stop the violence until over three and a half hours after the first 911 call was made.⁶⁷ The disparate levels of urgency displayed by law enforcement at UCLA in response to dismantling peaceful pro-Palestinian campus protests as compared to its response to protecting the same group of students from counter-protester violence raises critical concerns about the nondiscriminatory protection of all students at UCLA guaranteed under Title VI.

Even without militarized tactics or excessive force, law enforcement brings a clear threat of arrest and criminalization that can significantly harm young people's health and academic performance, severely impacting their ability to participate in school activities and creating a hostile environment under Title VI. Research demonstrates that both direct and indirect encounters with law enforcement worsens the mental and physical health of young people,⁶⁸ particularly Black and Latinx young people.⁶⁹ Direct and indirect encounters with law enforcement can also lead to lower test scores, higher rates of student absenteeism, and lower

⁶⁵ OFF. FOR C.R., U.S. DEP'T OF EDUC., DEAR COLLEAGUE LETTER: TITLE VI AND SHARED ANCESTRY OR ETHNIC CHARACTERISTICS DISCRIMINATION (May 7, 2024), <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-202405-shared-ancestry.pdf> (interpreting a hostile environment as arising from "unwelcome conduct [towards a student or group of students] based on race, color, or national origin that, based on the totality of circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person's ability to participate in or benefit from a school's education program or activity.").

⁶⁶ *Fact Sheet: Diversity & Inclusion Activities Under Title VI*, OFF. FOR C.R., U.S. DEP'T OF EDUC. (Jan. 2023), <https://www2.ed.gov/about/offices/list/ocr/docs/ocr-factsheet-tvi-dia-202301.pdf>.

⁶⁷ Swaine et al., *supra* note 39.

⁶⁸ Dylan B. Jackson et al., *Police stops and sleep behaviors among at-risk youth*, 6 SLEEP HEALTH 435 (2020), [https://www.sleephealthjournal.org/article/S2352-7218\(20\)30071-1/abstract](https://www.sleephealthjournal.org/article/S2352-7218(20)30071-1/abstract).

⁶⁹ Christopher R. Browning et al., *Exposure to police-related deaths and physiological stress among urban black youth*, 125 PSYCHONEUROENDOCRINOLOGY 104884 (2021), <https://www.sciencedirect.com/science/article/abs/pii/S0306453020303073?via%3Dihub>; Michael J. McFarland et al., *Police contact and health among urban adolescents: The role of perceived injustice*, 238 SOC. SCI. & MED. 112487 (2019), <https://www.sciencedirect.com/science/article/abs/pii/S0277953619304800?via%3Dihub>.

graduation rates.⁷⁰ As the decisionmakers responsible for calling in law enforcement to break up campus protests, university officials are not only aware of, but indeed responsible for, creating situations of escalating violence and harm—both in the near and long-term—for students.

OCR recently opened an investigation of Emory University in response to a Title VI complaint alleging months of ignored reports of anti-Palestinian, anti-Muslim, and anti-Arab harassment and discrimination on campus. This complaint, however, predates the violence experienced by campus protesters on Emory’s campus at the hands of the Atlanta Police Department and Georgia State Troopers—both of which university officials enlisted on April 25, 2024, to forcibly disband the peaceful protests. OCR must investigate schools like Emory that chose to summon law enforcement agencies to forcibly disband peaceful protests on their campuses rather than engage with the protesters through alternative means. The sheer presence of law enforcement officers can create an increasingly hostile environment and escalate tensions far beyond what existed before their arrival.⁷¹ Accordingly, OCR should take proper steps to evaluate whether a university’s decision to call in law enforcement to respond to peaceful campus protests violated Title VI.

To be clear, turning to state and local law enforcement agencies for assistance was not the only action available to school administrators. The presidents of Rutgers University in New Jersey and Northwestern University in Illinois, among others, used successful, less hostile alternatives to law enforcement to manage campus protests. Administrators at both universities engaged in negotiations with campus protesters to discuss their demands and reached an agreement without force or escalating violence. These universities offer laudable examples of ways to navigate rising tensions while respecting the civil and human rights of all campus protesters and maintaining student safety.

ED must also investigate whether universities’ treatment of students of color in disciplinary actions in connection with campus protests violates Title VI based on differential treatment. Outside of the campus protest context, there have been wide disparities in student discipline based on race and national origin.⁷² Princeton University reportedly withheld degrees of two undergraduate seniors—both Black students—due to ongoing disciplinary investigations in connection with a pro-Palestinian demonstration at the university president’s annual reunion address the weekend before.⁷³ Student journalists reviewed video footage and report that the two seniors did not participate in any of the allegedly disruptive actions observed that day, and

⁷⁰ Joscha Legewie & Jeffrey Fagan, *Aggressive Policing and the Educational Performance of Minority Youth*, 84 AM. SOCIO. REV. 220 (2019), <https://journals.sagepub.com/doi/full/10.1177/0003122419826020>.

⁷¹ See e.g., Whitney Bunts, *Defund Police in Schools and Expand School-Based Mental Health*, CTR. FOR L. & SOC. POL’Y (July 2, 2020), <https://www.clasp.org/blog/defund-police-schools-and-expand-school-based-mental-health/>; SANDHYA KAJEEPETA & DANIEL K.N. JOHNSON, POLICE AND PROTESTS: THE INEQUITY OF POLICE RESPONSES TO RACIAL JUSTICE DEMONSTRATIONS, THURGOOD MARSHALL INST., LEGAL DEF. FUND (Nov. 2023), https://tminstituteldf.org/wp-content/uploads/2023/10/Police-and-Protests_PDF-3.pdf.

⁷² OFF. FOR C.R., U.S. DEP’T OF EDUC., PENDING CASES CURRENTLY UNDER INVESTIGATION AT ELEMENTARY-SECONDARY AND POST-SECONDARY SCHOOLS (2024), <https://ocrcas.ed.gov/open-investigations> (database updated May 28, 2024) (finding that as of May 21, 2024, there were 424 pending Title VI cases for discriminatory discipline based on race and national origin currently under investigation, 10 of which are from the university level).

⁷³ Christopher Bao & Annie Rupertus, *University to hold the degrees of two seniors present at Eisgruber’s Reunions talk*, DAILY PRINCETONIAN (May 28, 2024), <https://www.dailyprincetonian.com/article/2024/05/princeton-news-adpol-senior-commencement-degree-withhold-palestine>.

even left early as the crowd of protesters began to chant, yet the university is withholding their degrees pending further investigation.⁷⁴ At least one other graduating senior among the protesters actively participated in the demonstration but did not have their degree withheld.⁷⁵ ED should thoroughly track the category, duration, and severity of university-ordered disciplinary sanctions on students involved with campus protests and evaluate whether students experienced different treatment based on a protected identity.

Title VI complaints have already been filed based on claims of a hostile environment and/or differential treatment, including complaints against Columbia University (hostile environment and differential treatment),⁷⁶ University of Massachusetts Amherst (hostile environment),⁷⁷ City University of New York School of Law (differential treatment),⁷⁸ Emory University (hostile environment),⁷⁹ Rutgers University (hostile environment),⁸⁰ and Northwestern University (hostile environment).⁸¹ It is imperative that OCR investigate these allegations of Title VI violations in an expedited fashion.

IV. Recommendations

Throughout history, acts of peaceful and nonviolent protest by concerned individuals have been a critical tool to call attention to civil and human rights violations and to advance racial and social justice. And, of course, any vision of racial or social justice cannot tolerate acts of hate or bias, including those that are anti-Arab, anti-Muslim, and antisemitic.

Tragically, the demonstrations proliferating on campuses today have consistently been met with racialized and excessive police violence, as have collective, organized advocacy for racial and social justice issues throughout our history, including the Civil Rights Movement of the 1960s. While police violence may have been the unfortunate response to past and present-day peaceful protests, it should not be tolerated by this Administration. It is, therefore, incumbent upon both DOJ and ED to take immediate action to hold individuals and law

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Columbia Students File Civil Rights Complaint After NYPD Arrests, National Guard Threat*, PALESTINE LEGAL (Apr. 25, 2024), <https://palestinelegal.org/news/2024/4/25/columbia-students-file-civil-rights-complaint-after-nypd-arrests-national-guard-threat>.

⁷⁷ *University of Massachusetts Amherst Under Federal Investigation for Anti-Palestinian Hostile Environment*, PALESTINE LEGAL (Apr. 24, 2024), <https://palestinelegal.org/news/2024/4/24/university-of-massachusetts-amherst-under-federal-investigation-for-anti-palestinian-hostile-environment>.

⁷⁸ *CUNY Students File Federal Civil Rights Complaint About Anti-Palestinian Racism*, MUSLIM ADVOCES. (Apr. 16, 2024), <https://muslimadvocates.org/2024/04/muslim-advocates-cuny-students-file-federal-civil-rights-complaint-about-anti-palestinian-racism/>.

⁷⁹ Timothy Pratt, *Revealed: Emory University investigated over alleged anti-Muslim discrimination*, GUARDIAN (May 2, 2024), <https://www.theguardian.com/us-news/2024/may/02/emory-university-atlanta-investigation-alleged-anti-muslim-discrimination>.

⁸⁰ *ADC File Title VI Complaint Against Rutgers U. Citing Hostile Anti-Palestinian Environment*, CAIR N.J. (Apr. 23, 2024), <https://cair-nj.org/cair-nj-adc-file-title-vi-complaint-against-rutgers-u-citing-hostile-anti-muslim-anti-palestinian-environment/>.

⁸¹ Beatrice Villaflor, *Palestine Legal files Title VI complaint against Pritzker for 'hostile anti-Palestinian environment'*, DAILY NORTHWESTERN (Apr. 19, 2024), <https://dailynorthwestern.com/2024/04/19/campus/palestine-legal-files-title-vi-complaint-against-pritzker-for-hostile-anti-palestinian-environment/>.

enforcement agencies accountable for any violation of protesters' rights and ensure such violations do not recur.

Accordingly, we urge DOJ to take the following steps to prevent and respond to the increasingly abusive and militarized responses by law enforcement against peaceful campus protesters:

- Review the conduct of law enforcement agencies involved in responses to peaceful campus protests nationwide to determine whether to initiate a pattern or practice investigation under 34 U.S.C. § 12601.
- Immediately initiate investigations under 34 U.S.C. § 12601 of NYPD's SRG unit, Georgia State Patrol, the Atlanta Police Department, Texas Highway Patrol (State Troopers), the University of Texas Police Department, California Highway Patrol, the UCLA Police Department, and the Los Angeles Police Department to determine whether each department's conduct in their policing of peaceful campus protesters systematically violated federal law. These investigations should review whether the uses of force, including use of less-than-lethal weapons, crowd management tactics employed against protesters and bystanders, and arrests of protesters and bystanders, constitute a pattern or practice of unlawful conduct under the First, Fourth, and Fourteenth Amendments of the U.S. Constitution, Title VI of the Civil Rights Act of 1964, and/or the Safe Streets Act of 1968.
- In the agreements that DOJ is negotiating with law enforcement in Louisville and Minneapolis to resolve the Department's findings of systemic unlawful conduct under 34 U.S.C. § 12601, impose strict prohibitions on the use of tear gas and other similar weapons with indiscriminate impact when encountering peaceful protests.
- Offer Community Relations Services (CRS) to mediate tensions between campus protesters and school administrators to prevent future calls for law enforcement to respond to peaceful campus protests. Law enforcement involvement in protests may escalate a situation where de-escalation is needed, especially in peaceful protests involving issues of social and racial justice. A recent study found that law enforcement were eight times more likely to use projectiles and chemical weapons at racial justice protests than non-racial justice protests.⁸²
- Strengthen agency standards to protect peaceful protesters from FBI surveillance and other privacy intrusions and publicly share the steps taken to prevent continuing unwarranted surveillance, particularly surveillance of protesters involved in racial justice and social justice issues.
- Investigate potential law enforcement violations of other applicable civil rights and federal statutes.

In addition to direct action from DOJ, we urge ED to take the following steps to safeguard students' constitutional and civil rights and ensure federally-funded institutions'

⁸² KAJEEPETA & JOHNSON, *supra* note 71.

compliance with anti-discrimination laws, including Title VI of the Civil Rights Act of 1964, which strictly prohibits discrimination based on race, color, or national origin in the use of federal funds:

- Dedicate resources in ED’s Office for Civil Rights to investigate pending Title VI complaints alleging discrimination on the basis of race, color, or national origin against universities regarding peaceful protest activities on campuses.
- Issue guidance jointly with DOJ to university administrators outlining the importance of students’ civil rights on college and university campuses and how to avoid violations of those rights when students are engaged in protest activities, including any rights that are relevant during law enforcement encounters. This guidance should include a directive that students not be punished (e.g., suspended) for engaging in peaceful protests that would not constitute hate speech. An arrest for engaging in such peaceful protests should not be used to justify administrative punishment for students given the history of law enforcement abuses in response to this type of constitutionally protected activity.
- Issue a statement uplifting university leaders who have resolved campus protests through negotiations instead of the use of law enforcement—like Northwestern University⁸³ and Rutgers University⁸⁴—highlighting these examples of positive reactions to campus protests across the country.

It is imperative that individuals engaged in peaceful campus protests continue to express their opinions on matters of utmost public importance. We thank you for your consideration of these urgent issues as many young people across the country participate in the type of peaceful civic engagement that is illustrative of a healthy and robust democracy. Please contact Puneet Cheema, Manager of LDF’s Justice in Public Safety Project, at pcheema@naacpldf.org if you have any questions regarding this matter.

Respectfully,

NAACP Legal Defense and Educational Fund, Inc.
Amnesty International USA
The Arab American Association of New York
Arab American Institute
Asian Americans Advancing Justice-AAJC
Asian American Legal Defense Fund & Education Fund
Bend the Arc: Jewish Action
CUNY Policing and Social Justice Project
Jews for Racial & Economic Justice (JFREJ)
LatinoJustice PRLDEF
NAACP

⁸³ Kathleen Foody, *Northwestern University’s Deal With Student Protesters Offers Example of Successful Negotiations*, TIME (May 1, 2024), <https://time.com/6973340/northwestern-universitys-deal-student-protesters-negotiations/>.

⁸⁴ Mary Ann Koruth, *Amid campus protests, Rutgers-New Brunswick commencement goes off without disturbance*, NORTHJERSEY.COM (May 13, 2024), <https://www.northjersey.com/story/news/education/2024/05/12/barring-an-early-exit-by-some-protestors-rutgers-new-brunswick-commencement-goes-off-smoothly/73664271007/>.

National Action Network
The National Urban League
National Women's Law Center
Public Science Project
Southern Center for Human Rights
Surveillance Technology Oversight Project
Vera Institute of Justice

Cc: Kristen Clarke, Assistant Attorney General, Civil Rights Division, Department of Justice
Catherine Lhamon, Assistant Secretary, Office for Civil Rights, Department of Education