

United States Senate

April 17, 2020

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

The Honorable Christopher Wray
Director
Federal Bureau of Investigation
935 Pennsylvania Avenue NW
Washington, DC 20535

Dear Attorney General Barr and Director Wray:

We write to request that your offices immediately provide training and guidance relating to bias in law enforcement during the coronavirus (COVID-19) pandemic.

On April 3, the CDC recommended that individuals “wear[] face coverings in public settings where other social distancing measures are difficult to maintain (e.g., grocery stores and pharmacies), especially in areas of significant community-based transmission.”¹ Less than one week later, African American men began reporting incidents of racial profiling for adhering to the CDC’s guidance. In Wood River, Illinois, for instance, two African American men in surgical masks recorded themselves being followed by a police officer as they left Walmart. The police officer reportedly asked for their identification and erroneously told them the city’s ordinance prohibited wearing masks in public. Wood River Police are now investigating the incident internally, with the assistance of the local NAACP.² In Miami, Florida, an African American doctor wore a mask as he prepared for a volunteer shift to test homeless individuals for COVID-19; he was subsequently handcuffed and detained outside his home. The Miami Police Department is investigating the incident.³

In other cases, African American men are reportedly being harassed for *not* wearing masks and face coverings in public. On April 9, the Southeastern Pennsylvania Transportation Authority (SEPTA) issued a policy requiring all riders to wear facial coverings on public transit. The next day, an African American man without a mask was depicted on video being forcibly

¹ *Recommendation Regarding the Use of Cloth Face Coverings, Especially in Areas of Significant Community-Based Transmission*, U.S. Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html>.

² Tracy Jan, *Two Black Men Say They Were Kicked Out of Walmart for Wearing Protective Masks*, WASHINGTON POST (April 9, 2020), <https://www.washingtonpost.com/business/2020/04/09/masks-racial-profiling-walmart-coronavirus/>.

³ Johnny Diaz, *Police Handcuff Black Doctor Who Tests Homeless for Coronavirus*, NEW YORK TIMES (April 14, 2020), <https://www.nytimes.com/2020/04/14/us/armen-henderson-arrested-homeless-coronavirus-testing.html>.

dragged from a bus by at least four police officers. A police report indicated that the rider had caused a disturbance on the bus stemming from a disagreement over wearing a face mask.⁴

In 2014, the U.S. Department of Justice issued guidance to expressly reaffirm the federal government’s “deep commitment to ensuring that its law enforcement agencies conduct their activities in an unbiased manner.”⁵ This guidance also clarified that “[b]iased practices . . . are unfair, promote mistrust of law enforcement, and perpetuate negative and harmful stereotypes. Moreover—and vitally important—biased practices are ineffective.”⁶ The Justice Department should send instructions to state and local law enforcement, consistent with this existing guidance.⁷ But recent cases also highlight the need for additional guidance on bias and enforcement during the COVID-19 pandemic. If communities of color—especially African American communities—feel at risk of disproportionate or selective enforcement, they may avoid seeking help or adopting precautionary measures recommended by the CDC. This, in turn, could have dire public health consequences—especially given that COVID-19 is already infecting and killing African Americans at alarming and disproportionately high rates.⁸

With the ongoing public health emergency, it is more important than ever for law enforcement to build trust with communities of color. Accordingly, we urge your agencies to immediately provide training and guidance on bias, policing, and disproportionate or selective enforcement during the COVID-19 pandemic. We also urge your agencies to encourage the use of federal guidance to create model recommendations at the state and local level.

Sincerely,



KAMALA D. HARRIS
United States Senator



CORY A. BOOKER
United States Senator

⁴ *Coronavirus News: SEPTA Changes Mask Policy After Videos Surface on Social Media*, ABC6 Philadelphia (April 11, 2020), <https://6abc.com/philadelphia-corona-virus-deaths-coronavirus-liocouras-center-citizens-bank-park-testing/6094181/>.

⁵ *Guidance for Federal Law Enforcement Agencies Regarding the Use of Race, Ethnicity, Gender, National Origin, Religion, Sexual Orientation, or Gender Identity*, U.S. Department of Justice (Dec. 2014), available at <https://www.justice.gov/sites/default/files/ag/pages/attachments/2014/12/08/use-of-race-policy.pdf>.

⁶ *Id.*

⁷ *See, e.g., Department of Justice Announces New Department-Wide Implicit Bias Training for Personnel*, U.S. Department of Justice (June 27, 2016), available at <https://www.justice.gov/opa/pr/departement-justice-announces-new-department-wide-implicit-bias-training-personnel>.

⁸ *See, e.g., Meagan Flynn, “Those Numbers Take Your Breath Away”: Covid-19 is Hitting Chicago’s Black Neighborhoods Much Harder Than Others, Officials Say*, Washington Post (April 7, 2020), <https://www.washingtonpost.com/nation/2020/04/07/chicago-racial-disparity-coronavirus/>.

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