United States Senate

June 11, 2020

The Honorable William P. Barr
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC, 20530

Dear Attorney General Barr:

As peaceful protestors across the country participate in demonstrations inspired by the killing of George Floyd, they should not be subject to invasive surveillance. The Department of Justice (DOJ) has an obligation to ensure that law enforcement officers acting on its behalf — of which the Department deployed an unknown number in recent weeks — as well as any technology those officers use — including facial recognition technology — do not infringe upon the civil liberties of Americans exercising their First Amendment rights. I write to request more information about federal law enforcement's surveillance practices, and, as demonstrations continue, I urge you to respect and protect the protestors' privacy and First Amendment rights.

Reports that DOJ has approved increased surveillance in response to peaceful protests for racial justice are highly concerning. According to one news story, DOJ leadership recently approved a request from the Drug Enforcement Administration (DEA) to "conduct interviews and searches," engage in "covert surveillance," and "share intelligence with federal, state, local, and tribal counterparts."[1] Your agency's approval of this request is deeply troubling. It raises significant questions about federal law enforcement personnel's tracking and monitoring of members of the public who are peacefully voicing their opinions in the public square.

DOJ's extensive engagement with the facial recognition technology company Clearview AI is also deeply troubling in the current environment. According to one report, "Clearview has also been used inside the Department of Justice, where the list of government organizations trialing the company's facial recognition software includes multiple offices at the US Secret Service (some 5,600 searches); the Drug Enforcement Administration (about 2,000 searches); the Bureau

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[1] Jason Leopold and Anthony Cormier, *The DEA Has Been Given Permission to Investigate People Protesting George Floyd's Death*, BuzzFeed News (Jun. 2, 2020) https://www.buzzfeednews.com/article/jasonleopold/george-floyd-police-brutality-protests-government.

of Alcohol, Tobacco, Firearms, and Explosives (more than 2,100 searches); and the FBI (5,700 searches across at least 20 different field offices)."[2] And DOJ apparently is not alone, as U.S. Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) also have reportedly utilized Clearview AI's facial recognition technology.[3] This technology is subject to unanswered questions about its reliability, accuracy — including racial bias — and security, raising concerns about its use, especially in the possible context of identifying lawful protestors exercising their constitutional rights. Furthermore, the widespread biometric data collection that facial recognition tools facilitate also runs the risk of deterring Americans from speaking out against injustice for fear of being permanently included in law enforcement databases.[4]

Additionally, on May 29, 2020, the Project on Government Oversight reported that CBP deployed a Predator drone over protestors in Minneapolis.[5] According to CBP, this drone was "preparing to provide live video to aid in situational awareness at the request of our federal law enforcement partners in Minneapolis."[6] This incident raises questions about how federal entities may be using unmanned aircraft systems to monitor peaceful protestors, using facial recognition technology or otherwise.

Together, these developments and other reports of recent high-tech monitoring[7] point to a systematic increase in surveillance practices by federal law enforcement entities in response to recent lawful protest activity. I call on you to end this trend, and I request responses to the following questions by June 25, 2020:

1. Please explain your agency's decision to approve DEA's request to conduct "covert surveillance" in response to the ongoing demonstrations inspired by the killing of George Floyd and explain how conducting that surveillance in response to public protests falls within the DEA's jurisdiction.

2. Has DOJ approved the use of "covert surveillance" by any entities other than DEA in response to the ongoing demonstrations? If yes, please identify those entities.

3. What does the term "covert surveillance" mean? Does it cover use of facial recognition in real-time only, does it also encompass analyzing post-demonstration footage? Please

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[2] Ryan Mac et al. *Clearview's Facial Recognition App Has Been Used By The Justice Department, ICE, Macy's, Walmart, And The NBA*, BuzzFeed News (Feb. 27, 2020) https://www.buzzfeednews.com/article/ryanmac/clearview-ai-fbi-ice-global-law-enforcement.

[3] *Id.*

[4] Albert Fox Cahn & Zachary Silver, *The Long, Ugly History of How Police Have Tracked Protesters*, FAST COMPANY (Jun. 2, 2020), https://www.fastcompany.com/90511912/the-long-ugly-history-of-how-police-havetracked-protesters.

[5] Jason Paladino (@jason_paladino), Twitter (May 29, 2020, 12:04 PM), https://twitter.com/jason_paladino/status/1266399916978507779.

[6] Press Release, U.S. Customs and Border Protection, CBP Statement on the AMO Unmanned Aircraft System in Minneapolis (May 29, 2020), https://www.cbp.gov/newsroom/speeches-and-statements/cbp-statement-amo-unmanned-aircraft-system-minneapolis.
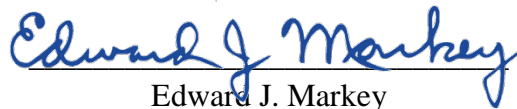
[7] Joseph Cox, *The Military and FBI Are Flying Surveillance Planes Over Protests*, Vice Motherboard (Jun. 3, 2020), https://www.vice.com/en_us/article/y3zvwj/military-fbi-flying-surveillance-planes-george-floyd-protesters.

identify the specific law enforcement practices that DOJ's approval of DEA's request to conduct covert surveillance covers.

4. Has DOJ authorized federal law enforcement personnel to use facial recognition technology on footage of demonstrators following George Floyd's killing?
    a. If yes, what was the purpose and scope of this surveillance?
    b. Have federal law enforcement entities contracted with private facial recognition companies? If yes, please identify those companies.
    c. Have federal law enforcement entities made any arrests based on facial recognition analysis of still images or video footage from recent demonstrations?
    d. Will DOJ commit to subjecting any facial recognition technology it has authorized for use during the ongoing demonstrations to an independent assessment of accuracy and bias by facial recognition experts, including testing for error rates for true negatives, false matches, and people of color, and publish the results of this assessment publicly? If not, why not?

5. Has DOJ deployed or authorized other federal law enforcement entities to deploy any unmanned aircraft systems to record or otherwise monitor the recent protests throughout the United States? If so, please provide a detailed description of all such deployments and authorizations, including a description of the video footage captured and how long DOJ or its partners plan to retain that footage.

6. Has DOJ deployed or authorized other federal law enforcement entities to deploy any tools that facilitate cellphone location tracking to monitor the recent protests? If so, please provide a detailed description of all such deployments and authorizations.

Thank you for your attention to these important matters.

Sincerely,

Edward J. Markey
United States Senator