

# United States Senate

WASHINGTON, DC 20510

June 7, 2021

The Honorable Merrick B. Garland  
Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Attorney General Garland:

The U.S. Department of Justice (DOJ) is currently dedicating enormous resources and manpower to investigating and prosecuting the criminals who breached the U.S. Capitol on January 6, 2021. We fully support and appreciate the efforts by the DOJ and its federal, state and local law enforcement partners to hold those responsible fully accountable.

We join all Americans in the expectation that the DOJ's response to the events of January 6 will result in rightful criminal prosecutions and accountability. As you are aware, the mission of the DOJ is, among other things, to ensure fair and impartial administration of justice for all Americans. Today, we write to request information about our concerns regarding potential unequal justice administered in response to other recent instances of mass unrest, destruction, and loss of life throughout the United States.

During the spring and summer of 2020, individuals used peaceful protests across the country to engage in rioting and other crimes that resulted in loss of life, injuries to law enforcement officers, and significant property damage.<sup>1</sup> A federal court house in Portland, Oregon, has been effectively under siege for months.<sup>2</sup> Property destruction stemming from the 2020 social justice protests throughout the country will reportedly result in at least \$1 billion to \$2 billion in paid insurance claims.<sup>3</sup>

In June 2020, the DOJ reportedly compiled the following information regarding last year's unrest:

- "One federal officer [was] killed, 147 federal officers [were] injured and 600 local officers [were] injured around the country during the protests, frequently from projectiles."<sup>4</sup>

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<sup>1</sup> Jennifer Kingson, *Exclusive: \$1 billion-plus riot damage is most expensive in insurance history*, Axios, Sept. 16, 2020, <https://www.axios.com/riots-cost-property-damage-276c9bcc-a455-4067-b06a-66f9db4cea9c.html>.

<sup>2</sup> Conrad Wilson and Jonathan Levinson, *Protesters, federal officers clash outside Portland's courthouse Thursday*, OPB, Mar. 12, 2021, <https://www.opb.org/article/2021/03/12/protesters-vandalize-portlands-federal-courthouse-again/>.

<sup>3</sup> Jennifer Kingson, *Exclusive: \$1 billion-plus riot damage is most expensive in insurance history*, Axios, Sept. 16, 2020, <https://www.axios.com/riots-cost-property-damage-276c9bcc-a455-4067-b06a-66f9db4cea9c.html>.

<sup>4</sup> Published in the Intercept, Jul. 15, 2020, <https://theintercept.com/document/2020/07/15/preventing-violence-and-criminal-activity-in-protection-of-lawful-protest/>.

- According to the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), “since the start of the unrest there has been 81 Federal Firearms License burglaries of an estimated loss of 1,116 firearms; 876 reported arsons; 76 explosive incidents; and 46 ATF arrests[.]”<sup>5</sup>

Despite these numerous examples of violence occurring during these protests, it appears that individuals charged with committing crimes at these events may benefit from infrequent prosecutions and minimal, if any, penalties. According to a recent article, “prosecutors have approved deals in at least half a dozen federal felony cases arising from clashes between protesters and law enforcement in Oregon last summer. The arrangements — known as deferred resolution agreements — will leave the defendants with a clean criminal record if they stay out of trouble for a period of time and complete a modest amount of community service, according to defense attorneys and court records.”<sup>6</sup>

DOJ’s apparent unwillingness to punish these individuals who allegedly committed crimes during the spring and summer 2020 protests stands in stark contrast to the harsher treatment of the individuals charged in connection with the January 6, 2021 breach of the U.S. Capitol Building in Washington, D.C. To date, DOJ has charged 510 individuals stemming from Capitol breach.<sup>7</sup> DOJ maintains and updates a webpage that lists the defendants charged with crimes committed at the Capitol. This database includes information such as the defendant’s name, charge(s), case number, case documents, location of arrest, case status, and informs readers when the entry was last updated.<sup>8</sup> No such database exists for alleged perpetrators of crimes associated with the spring and summer 2020 protests. It is unclear whether any defendants charged with crimes in connection with the Capitol breach have received deferred resolution agreements.

Americans have the constitutional right to peaceably assemble and petition the government for a redress of grievances. This constitutional right should be cherished and protected. Violence, property damage, and vandalism of any kind should not be tolerated and individuals that break the law should be prosecuted. However, the potential unequal administration of justice with respect to certain protestors is particularly concerning. In order to assist Congress in conducting its oversight work, we respectfully request answers to the following questions by June 21, 2021:

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<sup>5</sup> *Id.*

<sup>6</sup> Josh Gerstein, *Leniency for defendants in Portland clashes could affect Capitol riot cases*, Politico, Apr. 14, 2021, <https://www.politico.com/news/2021/04/14/portland-capitol-riot-cases-481346>.

<sup>7</sup> Madison Hall et al., *493 people have been charged in the Capitol insurrection so far. This searchable table shows them all.*, Insider, accessed June 4, 2021, <https://www.insider.com/all-the-us-capitol-pro-trump-riot-arrests-charges-names-2021-1>.

<sup>8</sup> *Capitol Breach Cases*, U.S. Dep’t of Justice, accessed May 21, 2021, <https://www.justice.gov/usao-dc/capitol-breach-cases?combine=&order=title&sort=asc>.

**Spring and Summer 2020 Unrest:**

1. Did federal law enforcement utilize geolocation data from defendants' cell phones to track protestors associated with the unrest in the spring and summer of 2020? If so, how many times and for which locations/riots?
2. How many individuals who may have committed crimes associated with protests in the spring and summer of 2020 were arrested by law enforcement using pre-dawn raids and SWAT teams?
3. How many individuals were incarcerated for allegedly committing crimes associated with protests in the spring and summer of 2020?
4. How many of these individuals are or were placed in solitary confinement? What was the average amount of consecutive days such individuals were in solitary confinement?
5. How many of these individuals have been released on bail?
6. How many of these individuals were released on their own recognizance or without being required to post bond?
7. How many of these individuals were offered deferred resolution agreements?<sup>9</sup>
8. How many DOJ prosecutors were assigned to work on cases involving defendants who allegedly committed crimes associated with protests in the spring and summer of 2020?
9. How many FBI personnel were assigned to work on cases involving defendants who allegedly committed crimes associated with protests in the spring and summer of 2020?

**January 6, 2021 U.S. Capitol Breach:**

10. Did federal law enforcement utilize geolocation data from defendants' cell phones to track protestors associated with the January 6, 2021 protests and Capitol breach? If so, how many times and how many additional arrests resulted from law enforcement utilizing geolocation information?
11. How many individuals who may have committed crimes associated with the Capitol breach were arrested by law enforcement using pre-dawn raids and SWAT teams?
12. How many individuals are incarcerated for allegedly committing crimes associated with the Capitol breach?

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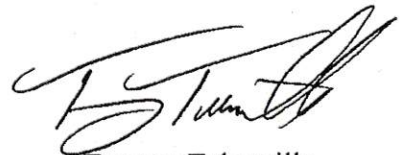
<sup>9</sup> Josh Gerstein, *Leniency for defendants in Portland clashes could affect Capitol riot cases*, Politico, Apr. 14, 2021, <https://www.politico.com/news/2021/04/14/portland-capitol-riot-cases-481346>.

13. How many of these individuals are or were placed in solitary confinement? What was the average amount of consecutive days such individuals were in solitary confinement?
14. How many of these individuals have been released on bail?
15. How many of these individuals have been released on their own recognizance or without being required to post bond?
16. How many of these individuals were offered deferred resolution agreements?
17. How many DOJ prosecutors have been assigned to work on cases involving defendants who allegedly committed crimes associated with the Capitol breach?
18. How many FBI personnel were assigned to work on cases involving defendants who allegedly committed crimes associated with the Capitol breach?

Sincerely,



Ron Johnson  
United States Senator



Tommy Tuberville  
United States Senator



Mike Lee  
United States Senator



Rick Scott  
United States Senator



Ted Cruz  
United States Senator