

**U.S. House of Representatives**  
**Committee on the Judiciary**  
Washington, DC 20515-6216

January 29, 2021

The Honorable Monty Wilkinson  
Acting Attorney General  
U.S. Department of Justice  
950 Pennsylvania Avenue, NW  
Washington, DC 20530

Dear Acting Attorney General Wilkinson:

Following the attack on the U.S. Capitol, we were heartened to hear that Michael R. Sherwin, Acting United States Attorney for the District of Columbia, announced his intent to prosecute the rioters and insurrectionists who breached the United States Capitol, assaulted United States Capitol Police Officers, and destroyed federal property.<sup>1</sup> Similar statements have also been made by other U.S. Attorneys across the country. In a January 12, 2021 press conference, FBI Washington Field Office ADIC Steven D'Antuono referenced publicly that there are, at last publicly available count at least 275 open case files, representing the "tip of the iceberg" in this matter.<sup>2</sup> More recent reports suggest that over 400 investigations have been opened.<sup>3</sup> Acting U.S. Attorney Sherwin also noted at the January 12th briefing that the scale of the inquiry would be an "unprecedented" long-term investigation for the Justice Department and the FBI. He suggested that there could be "hundreds" of criminal cases filed in local superior courts as well as the federal courts. Sherwin also said that the gamut of criminal conduct and possible cases was "mind-blowing."

More recently, reports have emerged that suggest that the U.S. Attorney's Office is considering whether to charge a large portion of the rioters who breached the Capitol security perimeter.<sup>4</sup> It is critical that all of the perpetrators of this insurrectionist attack be identified, investigated,

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<sup>1</sup> Press Conference, U.S. Dep't Just., Acting U.S. Attorney Michael Sherwin for the District of Columbia and FBI Washington Field Office ADIC Steven D'Antuono Provide Update on Criminal Charges Related to Events at the Capitol on January 6 (Jan. 12, 2021), <https://www.justice.gov/opa/video/acting-us-attorney-michael-sherwin-district-columbia-and-fbi-washington-field-office-adic>.

<sup>2</sup> Zachary Cohen, "275 Cases Open in Capitol Riot Investigation, US Prosecutors Say," CNN (Jan. 15, 2021), <https://www.cnn.com/2021/01/15/politics/capitol-riot-violent/index.html>.

<sup>3</sup> Spencer S. Hsu, et al., "U.S. Prosecutors Eye 400 Potential Suspects, Expect Sedition Charges 'Very soon' in Jan. 6 Capitol Breach," WASH. POST (Jan. 26, 2021), [https://www.washingtonpost.com/local/legal-issues/pelosi-laptop-arrest-hearing-capitol-riot/2021/01/26/4ddda1ae-5ff6-11eb-9430-e7c77b5b0297\\_story.html](https://www.washingtonpost.com/local/legal-issues/pelosi-laptop-arrest-hearing-capitol-riot/2021/01/26/4ddda1ae-5ff6-11eb-9430-e7c77b5b0297_story.html).

<sup>4</sup> Devlin Barrett & Spencer S. Hsu, "Justice Department, FBI Debate Not Charging Some of the Capitol Rioters," WASH. POST (Jan. 23, 2021), [https://www.washingtonpost.com/national-security/doj-capitol-rioters-charges-debate/2021/01/23/3b0cf112-5d97-11eb-8bcf-3877871c819d\\_story.html](https://www.washingtonpost.com/national-security/doj-capitol-rioters-charges-debate/2021/01/23/3b0cf112-5d97-11eb-8bcf-3877871c819d_story.html).

arrested, charged and subsequently prosecuted. The Department of Justice must dedicate every available resource to its offices across the country in order to ensure that all of these individuals are held accountable.

Reports abound of both well-developed and ad hoc conspiracies to attack the Capitol in order to disrupt the constitutional process to certify the votes of the Electoral College.<sup>5</sup> These involved threats of violence and the planning of the attack, and many of these statements and reports went far beyond protected First Amendment activity. As soon as possible, we respectfully request more detailed information on what process and criteria is being used in order to determine whether charges will be brought in federal court or Superior Court of the District of Columbia. We would also like more information about when and whether any additional charges will be filed and whether any cases filed initially in Superior Court are subsequently transferred to federal court.

As these investigations proceed, please provide us with copies of any memorandum or guidance documents issued to the Justice Department's 94 U.S. Attorney offices regarding any investigative guidelines, strike forces or prosecutorial guidance relating to these cases. Specifically, we would also like to request more information on the strike force relating to sedition charges that Acting U.S. Attorney Sherwin referenced in his recent press conference.<sup>6</sup> We also respectfully request detailed updates and copies of any charging memoranda for these cases. Furthermore, we would like to be updated on how each office will pursue the charges associated in this case as well as the any criteria to categorize cases as either misdemeanors or felonies.

The explicit racist and anti-Semitic tone of the attack on the Capitol is deeply disturbing. The insurrectionists peppered African American officers with racist remarks as some officers were engaged in hand-to-hand confrontations.<sup>7</sup> There have been widely distributed images of individuals displaying anti-Semitic propaganda. National investigations should include an examination of whether insurrectionists targeted the officers based on actual or perceived race or national origin. Should evidence of such targeted attacks, based on race or national origin, be uncovered, we ask that you report to us on whether these activities are charged and prosecuted as federal hate crimes.

Sadly, it appears that former and retired employees of the United States military, including veterans, participated in unlawful breach of the Capitol barriers and illegal entry into the Capitol.<sup>8</sup> In a memorandum issued last week, the Joint Chiefs of Staff recognized that this event

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<sup>5</sup> Spencer S. Hsu et al., "Self-styled militia members planned on storming the U.S. Capitol days in advance of Jan. 6 attack, court documents say Investigative reporter," WASH. POST (Jan. 19, 2021), [https://www.washingtonpost.com/local/legal-issues/conspiracy-oath-keeper-arrest-capitol-riot/2021/01/19/fb84877a-5a4f-11eb-8bcf-3877871c819d\\_story.html](https://www.washingtonpost.com/local/legal-issues/conspiracy-oath-keeper-arrest-capitol-riot/2021/01/19/fb84877a-5a4f-11eb-8bcf-3877871c819d_story.html).

<sup>6</sup> *Id.*

<sup>7</sup> Emmanuel Felton, "Black Police Officers Describe the Racist Attacks They Faced as They Protected the Capitol," BUZZFEED NEWS (Jan. 9, 2021), <https://www.buzzfeednews.com/article/emmanuelfelton/black-capitol-police-racism-mob>.

<sup>8</sup> Tom Dreisbach & Meg Anderson, "Nearly 1 In 5 Defendants in Capitol Riot Cases Served in The Military," NPR (Jan. 21, 2021), <https://www.npr.org/2021/01/21/958915267/nearly-one-in-five-defendants-in-capitol-riot-cases-served-in-the-military>.

was a “direct assault on the U.S. Congress, the Capitol building and our Constitutional process.” These military leaders stated bluntly that the actions of those involved were “inconsistent with the rule of law.” As you are well aware, any type of activity that involves violence, civil disobedience, or a breach of peace should be punishable under the Uniform Code of Military Justice or under state or federal law. Anyone involved in the attack on the Capitol should be identified and investigated to determine whether federal charges are appropriate. To the degree that there will be distinguishing criteria regarding the manner or prioritization in which federal prosecutors investigate and pursue charges, we ask that you provide us with detailed information relating to how these policies are developed and applied consistently throughout the country.

In addition, as the Department of Justice moves forward, we ask that the House Judiciary Committee receive briefings and written reports on the aggregate numbers of the cases under investigation as well as number of cases with charges filed. As these cases proceed, we would also like to request ongoing, timely reports listing the charges filed and any resulting convictions. In these reports, please include information relating to cases brought in the District of Columbia as well as individual federal districts that identifies both the offenses charged as well as the offense of conviction and average sentence for any resulting convictions. Further, we request that these reports contain demographic data about whether any of those charged held any current or past positions of public trust or military or law enforcement service, especially given reports that some of these individuals may have been elected to public office or had even current or recent military or law enforcement service.

The events of January 6 were an attack on our democracy and, in effect, our entire country. We thank you for the role that the Department’s investigators and prosecutors will play in bringing those responsible to justice, and in helping to prevent any such future attacks.

Sincerely,

A handwritten signature in black ink that reads "Jerrold Nadler". The signature is written in a cursive, flowing style.

Jerrold Nadler  
Chairman

cc: The Honorable Jim Jordan, Ranking Member, House Committee on the Judiciary