

The Honorable Jerrold Nadler, Chair
The Honorable Mary Gay Scanlon, Vice Chair
Committee on the Judiciary
U.S. House of Representatives

May 29, 2020

Dear Mr. Chairman Nadler and Madame Vice Chairwoman Scanlon,

We urge you to convene an impeachment inquiry immediately to investigate whether to recommend articles of impeachment against President Donald J. Trump for counseling, commanding, inducing or inciting violence and murder.

As you know, there are currently major protests in Minneapolis and other American cities following the police killing of an unarmed black civilian named George Floyd, for which at least one police officer will be prosecuted for murder. In response to these protests, President Trump today issued the following public statement via Twitter: “These THUGS are dishonoring the memory of George Floyd, and I won’t let that happen. Just spoke to Governor Tim Walz and told him that the Military is with him all the way. Any difficulty and we will assume control but, when the looting starts, the shooting starts. Thank you!”¹ Shortly after Governor Tim Walz signed an executive order activating five hundred members of the state National Guard, Trump followed up on his announcement with a tweet stating that “The National Guard has arrived on the scene. They are in Minneapolis and fully prepared.”²

This tweet is not just the raving of an unhinged individual citizen ranting on Twitter or at the television screen. This is the President of the United States instructing law enforcement, the military, and his heavily armed civilian followers to commit violence and murder.

¹ Donald J. Trump (@realDonaldTrump), Twitter (May 29, 2020, 12:53 AM), <https://twitter.com/realDonaldTrump/status/1266231100780744704>.

² Donald J. Trump (@realDonaldTrump), Twitter (May 29, 2020, 10:46 AM), <https://twitter.com/realDonaldTrump/status/1266380510344949761>.

According to the White House, Trump’s tweets “are considered official statements by the president of the United States.”³ Indeed, the White House repeated the exact same statement from its official account.⁴ And as a federal court decision pointed out, his tweets are official presidential records and are considered “state action.”⁵

“When the looting starts, the shooting starts”—a phrase coined in 1967 by a racist police chief whose rhetoric was later condemned by the National Commission on the Causes and Prevention of Violence⁶—may be the policy in the autocratic nations that Trump so admires, such as Putin’s Russia or Duterte’s Philippines. But it is repugnant to the Constitution of the United States. Under our system of laws, there is no justification for inciting or ordering lethal force against people in response to property crimes.

It is a frightening day in America when the President of the United States issues an official statement calling on soldiers to gun down people in the streets. Of course, any individuals engaged in larceny are subject to arrest and prosecution. But larceny is not a capital offense in the United States, and even if it were, in America—as opposed to the dictatorships that inspire Trump—neither soldiers nor vigilantes are empowered to engage in extrajudicial executions.

The fact that the president’s imperative was not an explicit direct order is of little import. As a federal court has noted, even in the military, “rarely do general officers issue commands or orders in form as such, and by almost universal acceptance their expressed wishes are interpreted by their subordinates as orders.”⁷

³ Ali Vitali, *Trump’s Tweets ‘Official Statements,’ Spicer Says*, NBC, June 6, 2017, <https://nbcnews.to/2GIT2yp>.

⁴ The White House (@WhiteHouse), Twitter (May 29, 2020, 5:17 AM), <https://twitter.com/WhiteHouse/status/1266342941649506304>.

⁵ Knight First Amendment Inst. v. Trump, 928 F.3d 226, 232 (2d Cir. 2019), *reh’g en banc denied*, 953 F.3d 216 (2d Cir. 2020).

⁶ See Michael S. Rosenwald, ‘*When the looting starts, the shooting starts*’: Trump quotes Miami police chief’s notorious 1967 warning, Wash. Post, May 29, 2020, <https://wapo.st/3gzI9MW>.

⁷ Jackson v. McElroy, 163 F. Supp. 257, 262 (D.D.C. 1958).

Nor does it matter that Trump later tried to backtrack, by implausibly claiming that he meant only that “[l]ooting leads to shooting, and . . . I don’t want this to happen.”⁸ Words have meaning, especially in official statements of the President of the United States, and cannot be swept under the rug by claiming that “nobody should have any problem with” an order or incitement to violence “other than the haters, and those looking to cause trouble on social media.”⁹

That is all the more so given Trump’s use of dehumanizing, racist language to refer to the protesters, and his long history of racist rhetoric and incitement of illegal violence against people of color, which contributed to the atmosphere that led to the police killing of George Floyd in the first place.¹⁰ For example, in July 2017, President Trump encouraged police to be “rough” with “thugs” that they arrest, specifically advocating that police *not* take care to avoid causing head injuries to arrested people.¹¹ This speech was widely understood, including by police chiefs nationwide, as endorsing police brutality.¹² Similarly, in 2017, the commander-in-chief exhorted the nation to “study” an urban legend about General Pershing committing war crimes against Muslim prisoners of war, not as a cautionary tale but as a model for the future.¹³ An imperative to “study” this incident issued by the president, whom the Constitution designates as “Commander in Chief of the Army and Navy of the United States,”¹⁴ cannot be

⁸ Donald J. Trump (@realDonaldTrump), Twitter (May 29, 2020, 11:20 AM), <https://twitter.com/realDonaldTrump/status/1266434153932894208>.

⁹ Donald J. Trump (@realDonaldTrump), Twitter (May 29, 2020, 11:20 AM), <https://twitter.com/realDonaldTrump/status/1266434155543506945>.

¹⁰ For additional background, see Free Speech For People et al., *When is racist abuse of office an impeachable offense?* (Sept. 2019), <http://bit.ly/BigotryReport>.

¹¹ Philip Bump, *Trump’s Speech Encouraging Police to be “Rough,” Annotated*, WASH. POST, July 28, 2017, <https://wapo.st/2x85h2t>.

¹² Cleve R. Wootson Jr. & Mark Berman, *U.S. Police Chiefs Blast Trump for Endorsing ‘Police Brutality’*, WASH. POST, July 30, 2017, <http://wapo.st/2kbuOli>.

¹³ Donald J. Trump (@realDonaldTrump), Twitter (Aug. 17, 2017, 11:45 AM), <https://twitter.com/realDonaldTrump/status/898254409511129088>; Jenna Johnson & Jose A. DelReal, *Trump Tells Story About Killing Terrorists With Bullets Dipped in Pigs’ Blood, Though There’s No Proof of It*, WASH. POST, Feb. 20, 2016, <http://wapo.st/1OkWQMy>.

¹⁴ U.S. CONST. art. II, § 2, cl. 1.

dismissed as merely a suggestion that the history faculty at the military academies should add it to a course syllabus. To the contrary, the president's imperative could be interpreted as an order to commit war crimes.¹⁵ Also in this vein were Trump's remarks when he announced his pardon of former Arizona sheriff Joe Arpaio. Arpaio, who had a long history of abusive treatment of (mostly Latinx) people in his office's custody, had been convicted of criminal contempt of court for willfully disobeying a court order to stop illegal detentions.¹⁶ But Trump explained that he issued the pardon because Arpaio was "convicted for doing his job" and "[h]e kept Arizona safe!"¹⁷ To a law enforcement officer who is inclined to follow Arpaio's example—such as, perhaps, the officer who killed George Floyd, or those who may be inclined to follow Trump's advice that "when the looting starts, the shooting starts"—that reads like a full-throated endorsement of the convicted sheriff's methods.

Trump's rhetoric may also incite illegal violence by armed civilians. This, too, is an impeachable abuse of power. In 1992, the United States ratified the International Covenant on Civil and Political Rights, which provides that "[a]ny advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law."¹⁸ Under the Supreme Court's *Brandenburg* test, there is a high bar for *punishing* an individual for speech advocating violence unless it directed to (and likely to result in)

¹⁵ See 18 U.S.C. § 2441(d)(1)(D).

¹⁶ United States v. Arpaio, No. CR-16-01012-001, 2017 WL 3268180, at *7 (D. Ariz. July 31, 2017), <http://bit.ly/2k5SgQB>; Jacey Fortin, *A Guide to Joe Arpaio, the Longtime Sheriff Who Escaped Strife*, N.Y. TIMES, Aug. 27, 2017, <https://nyti.ms/2vzWwbh>; Hilary Hanson & Sam Levine, *Local newspaper tears into former Sheriff Joe Arpaio in savage Twitter thread*, HUFFINGTON POST (Aug. 26, 2017), <http://bit.ly/2icbHXw> (summarizing Arpaio's history).

¹⁷ Donald J. Trump (@realDonaldTrump), Twitter (Aug. 25, 2017, 7:00 PM), <https://twitter.com/realdonaldtrump/status/901263061511794688>; Max Walker & Josh Frigerio, *Sheriff Joe Arpaio Pardon: President Trump Hints 'He'll be Fine'*, ABC 15 NEWS (Aug. 23, 2017), <http://bit.ly/2k3M6k8>.

¹⁸ International Covenant on Civil & Political Rights, Dec. 19, 1966, art. 20, 999 U.N.T.S. 171, <http://bit.ly/2AtqT8l>; Senate Consideration of Treaty Doc. 95-20 (Apr. 2, 1992), <https://go.usa.gov/xVy2R>.

inciting or producing “imminent lawless action.”¹⁹ The prosecution and conviction of chief Nazi propagandist Julius Streicher for incitement to genocide at the International Military Tribunal in Nuremberg probably would not have met that test.²⁰ But whether the president could be criminally punished is not the only question here. Rather, the key question is under what circumstances he should be impeached and removed from office. The First Amendment does not prevent Congress from impeaching and removing the president if he uses his bully pulpit to sow discord within American society by encouraging bigotry and violence. Such rhetoric fulfills no identifiable governmental function; it is simply misuse of his taxpayer-funded position.

President Trump’s tweets amount to an incitement of unlawful violence. He has counseled, commanded, induced, or procured the commission of a federal offense.²¹ He has violated his responsibilities under the United States Constitution and the laws of this country. He has counseled the execution of civilians for committing property offenses—indeed, for being found near sites where *others* may be committing property offenses. He has sanctioned state-sponsored violence against protesters who themselves are protesting the use of lethal force by law enforcement.

The U.S. Constitution requires that the President “shall take Care that the Laws be faithfully executed.”²² Trump is doing the opposite. He is ordering civilians to be shot in the streets.

We are of course aware that the presidential general election is just five months away. But there is no “several months before election” exception to the impeachment power of Congress. Indeed, if Congress were to adopt an unofficial rule against impeachment in the last few

¹⁹ *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).

²⁰ See generally Wibe Kristin Timmermann, *Incitement in international criminal law*, 88 INT’L REV. OF THE RED CROSS 823, 827–28 (Dec. 2006).

²¹ See 10 U.S.C. § 918 (murder under Uniform Code of Military Justice); 18 U.S.C. § 2(a) (“Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.” (emphasis added)).

²² U.S. Const. art. II, § 2.

months before an election, an incumbent president determined to abuse his office—such as Trump—would be unleashed to commit autocratic abuses of power to protect his political prospects without fear of consequence.

We ask that you convene an impeachment inquiry to investigate whether President Trump's recent pronouncement amount to an impeachable abuse of power by advocating illegal violence by government personnel and others, and to determine whether to recommend articles of impeachment.

Sincerely,

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