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Challenging White House, Federal Law Enforcement Arrest Secrecy

Dear Members of News Media:

The Trump Administration's actions in the past two weeks to take over law enforcement on D.C. streets are posing challenges for reporters trying to separate facts from hyperbolic rhetoric, and explain to the public, those who live and work here, and others, what is happening. Since 2009, the D.C. Open Government Coalition has advocated for government transparency, and this memo is intended to help you overcome those challenges.

Every day since federal law enforcement agents and National Guard troops — from D.C. and elsewhere — hit District streets, the White House has announced opaque arrest statistics. It touts the numbers of arrests and gun seizures for the previous 24 hours and cumulative totals since the takeover began. But it refuses to disclose who was arrested, what charges they face, where arrests occurred, or events preceding the arrests. From the little information provided, it appears many of the arrests were immigration matters — at least some involving individuals in protected status who have no criminal records.

The White House and the U.S. Attorney are loudly claiming credit for cleaning up crime in the District. But it is impossible to know whether the heavy-handed federal tactics have produced any more arrests, or recovered any more guns, than the Metropolitan Police Department (MPD) did at the same time last year, or even two weeks ago. Similarly, the denial of information prevents comparison of the MPD's crime fighting efforts with those of local law enforcement agencies in other American cities of comparable size.

We don't know if MPD arrests are included in the White House statistics, and the Department refuses to help, referring reporters to the White House or Department of Justice instead of providing context or real-time data.

MPD is required by statute to make arrest logs public, and federal law enforcement agencies operating in the District must do so as well. The D.C. Code intends this to be real-time reporting. It does not require reporters and the public generally to file Freedom of Information Act (FOIA) requests, then wait weeks for the records.

The statutes reinforce a core constitutional principle protecting an individual's right to liberty against the enormous power law enforcement officers wield. Contemporaneous release of arrest records protects each of us from government-run campaigns of terror like the Courts of Star Chamber in England, the Inquisition in Spain, and the middle-of-the-night knock on the door employed most recently by autocracies around the world.

The public's right of contemporaneous access to arrest records under statutes like D.C. Code § 5-113.06 and the First Amendment, protects our Fourth Amendment right against illegal search or seizure and our Fifth Amendment right to due process of law.

The Trump Administration has justified its actions with the narrative that the District is a crime-ridden city incapable of self-government. Citizens of the District, and the nation, deserve to know the full facts behind that narrative so they can evaluate the claim for themselves. This document and its attachments are intended to help you get the facts you need to report fully on these issues.

WHAT THE LAW AND MPD ORDERS REQUIRE:

The D.C. Code requires the MPD to maintain and make public:

(4) Arrest books, which shall contain the following information:

- (A) Case number, date of arrest, and time of recording arrest in arrest book;
- (B) Name, address, date of birth, color, birthplace, occupation, and marital status of person arrested;
- (C) Offense with which person arrested was charged and place where person was arrested;
- (D) Name and address of complainant;
- (E) Name of arresting officer; and
- (F) Disposition of case;

Id. §§ 5-113.01, 5-113.06(a)

MPD must similarly log every arrest made by other law enforcement agencies or the U.S. Marshals Service of an individual “charged with having committed a criminal offense in the District,” with the exception of traffic violations and petty offenses. § 5-113.02(a). It is important to note that the statute does not distinguish among charges arising under District or federal law, or whether the individual might be prosecuted in D.C. Superior Court or the U.S. District Court. To ensure that MPD gets records to include in arrest books, when federal law enforcement agencies charge people here, the statute requires notification of the police chief by the U.S. “Attorney General, the [D.C. Attorney General], the United States Magistrate for the District, the

Clerk of the District Court, the Clerk of the Superior Court of the District of Columbia, and the Director of the Department of Corrections.”¹ *Id.* §§ 5-113.02(b) and 5-113.03.

Finally, within 12 hours after an arrest, notice must be made public. D.C. Code § 5-115.02. According to MPD Special Order SO-11-09, each police district must maintain a publicly available arrest book listing all arrests in the district for the previous 30 days. Every day from Monday to Friday, administrative staff must add the report of arrests made in the district the previous day. The Monday update must include arrests made over the weekend.

We’ve attached a copy of the relevant statutes, SO-11-09, and MPD General Order 501.07, which addresses procedures for booking and logging in the arrest book arrests made by other law enforcement agencies.

If you are trying to find out who federal law enforcement agents have arrested, charges lodged against them, and other information about their cases, you should check the Superior Court lock-up list posted every day Superior Court Courtroom C-10 is in session. That list does not include cases charged in federal court, but it can provide useful clues about Superior Court cases.

If you have questions please contact:

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¹ You might reasonably ask how the District can compel federal officials to do this? There are two answers: 1) under the Home Rule Act, most amendments to the D.C. Code are subject to review and approval by Congress, which can require federal agencies to act; and 2) these provisions largely predate Home Rule, and were carried forward from when Congress governed D.C. It is open to question whether, due to separation of powers, Congress had authority to require federal magistrates and court clerks to comply with this provision.