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April 16, 2021

By Federal Express

Merrick Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Re: Re-Open DOJ's Investigation in Tamir Rice Police-Shooting Case

Dear Attorney General Garland:

This firm, together with FirmEquity LLC and The Chandra Law Firm LLC, represent the family of Tamir Rice, the 12-year-old boy who was shot and killed by Cleveland police officers in one second on November 22, 2014.

Under President Obama, the Department of Justice opened a much-needed investigation into this case. But President Trump's political appointees killed that investigation. Career attorneys at DOJ sought *twice* to convene a grand jury in this case, only to be quashed by their political superiors. At the end of 2020, in the waning weeks of the Trump presidency—and only after the *New York Times* and *Washington Post* revealed the political interference—DOJ formally announced it was closing this investigation without bringing any charges, and without ever convening a grand jury.

The election of President Biden, your appointment, and your commitment to the rule of law, racial justice, and police reform give Tamir's family hope that the chance for accountability is not lost forever. We write on their behalf to request that you re-open this investigation and convene a grand jury to consider charges against the police officers who killed Tamir.

The Fatal Shooting of Tamir Rice Captured on Video

When Trump's DOJ announced its decision to close this case, it did so in a letter designed to make the case seem as complicated as possible. *See* below.

The truth is this case is tragically simple.

Tamir Rice was a boy. On November 22, 2014, he was doing something many boys enjoy: playing with a toy gun in a park near his house. When Cleveland police officers drove into the park at high speed, Tamir wasn't brandishing his pellet gun. The toy wasn't even visible. No one else was around, so no one was in any danger. But Officer Timothy Loehmann jumped out of the squad car while it was still rolling and, astonishingly, shot Tamir immediately. Why would a police officer instantly shoot a child when there was no imminent danger? There is only one answer: Tamir was Black and the Cleveland police, like many departments across the country, engage in precipitous, unlawful, and unjustified use of force in communities of color, frequently with impunity.

As Loehmann's fatal bullet struck him in the stomach, Tamir collapsed to the ground. About one minute later, his sister, Tajai, who had been playing with him at the nearby community center ran towards him crying "my baby brother, they killed my baby brother." Officer Garmback, Loehmann's partner who had been driving, tackled her to the ground. When she tried to crawl away, Officer Loehmann dragged her back down. The officers then put Tajai—who they knew was a child and the sister of the boy they had just shot—in handcuffs in their police car, right next to where her brother lay injured and dying on the ground.

Shockingly, neither of the officers ever gave Tamir any medical treatment or care—not even basic first aid or CPR.

When Tamir's mother, Samaria Rice, heard about the shooting and rushed to the park, the officers refused to release Tajai to her. Instead, they told her she had to choose between going to the hospital with her fatally wounded 12-year-old son and staying with her handcuffed 14-year-old daughter, who was in the back of the car with the very same officers who had shot her son. When Ms. Rice chose to go with Tamir, Cleveland police officers interrogated Tajai without any adult present, trying unsuccessfully to build a cover up for their unjustified shooting.

When Loehmann gave his account of the shooting, he testified that he gave Tamir multiple commands to raise his hands. He lied. Security video footage of the shooting shows that was impossible: Loehmann immediately opened fire as the police car, driven by Garmback, was still pulling up. There was no time for multiple commands, much less time for Tamir to comply with such commands had they been given. And giving commands as the car drove up to Tamir, through the car window that Garmback said was rolled-up that winter's day, would have made no sense.

Local Prosecutors Told the Cleveland Grand Jury Not to Indict

After seeing the video of the shooting, Judge Ronald B. Adrine of the Cleveland

Municipal Court found probable cause to charge Officers Timothy Loehmann and Frank Garmback, writing: “The video in question is notorious and hard to watch. After viewing it several times, this court is still thunderstruck by how quickly this event turned deadly.” A grand jury was convened.

But then local prosecutors got involved.

In regular criminal cases, when the accused is not a police officer, lawyers famously say a prosecutor could get a grand jury to indict a ham sandwich, an adage born of the tremendous power prosecutors wield in the grand jury where there is no opportunity for a defense case and no opportunity for cross-examination—just a one-sided presentation by the prosecutor with the singular purpose of securing an indictment against the accused.

But it has become apparent that in many police-shooting cases, local prosecutors are often too closely intertwined with local police officers with whom they work regularly and are unwilling to prosecute them in the same way they treat other suspects accused of criminal conduct.

Here, local Cleveland prosecutor Timothy McGinty (since voted out of office in a campaign led by Black Lives Matter over the way he mishandled this case) worked openly and aggressively to *exonerate* the officers who killed Tamir rather than prosecute them.

Just some examples of the way in which local prosecutors acted as the police officers’ functional defense attorneys include:

- By McGinty’s own admission, local prosecutors told the grand jury in their closing argument *they should not indict*.
- McGinty allowed Officers Loehmann and Garmback (*i.e.*, the targets of the grand jury) to read prepared, self-serving statements to the grand jury after taking the oath, and then purportedly invoke the Fifth Amendment and refuse to answer a single question.¹ This was in violation of longstanding Supreme Court precedent holding that, by testifying under oath, the officers waived their Fifth Amendment right to be silent because a witness can “*not take the stand to testify in [his] own behalf and also claim the right to be free from cross-examination on matters raised by [his] own testimony on direct examination.*” *Brown v. United States*, 356 U.S. 148, 155–56 (1958) (emphasis added). As the Supreme Court has explained, a witness “cannot reasonably claim that the Fifth Amendment gives him not only this choice [to testify or not] but, if he elects to testify, an immunity from cross-examination on the matters he has himself put in dispute. It would make of the Fifth Amendment not only a humane safeguard against judicially coerced self-disclosure but a positive invitation to mutilate the truth a party offers to tell.” *Id.*

¹ See Cory Shaffer, *Officers in Tamir Rice Case Were Sworn in Before Grand Jury, Answered No Questions, Union Says*, Cleveland.com (Dec. 3, 2015), available at http://www.cleveland.com/metro/index.ssf/2015/12/officers_in_tamir_rice_case_we.html.

- In a move unheard of before or since, Cleveland prosecutors hired and paid three expert witnesses to tell the grand jury that the shooting *was justified*.²
- In violation of Ohio law, which requires grand jury proceedings to be kept secret, and in an obvious attempt to taint the jury pool, Cleveland prosecutors disseminated these so-called experts' reports to the media. *See* Ohio Crim. R. 6(E).
- While declining to cross-examine the officers, the prosecutors chose instead to cross-examine and mock the other expert law-enforcement witnesses who told the grand jury that the shooting was unjustified.³ One prosecutor stuck a toy gun in an expert's face while he was on the stand; another asked whether the expert was "seriously asking this grand jury to take away these officers' liberty?"
- Prosecutor McGinty attacked Samaria Rice, the victim's mother, and made racist and demeaning remarks in a press conference suggesting her interest in criminal accountability was motivated by "economic interests."

Trump's DOJ Kills the Federal Investigation into Tamir's Death

We first wrote to DOJ to request a federal investigation at the end of 2015, when it was clear that local prosecutors were determined to scuttle the local investigation and exonerate the officers. Over the next five years, it was our impression that career DOJ attorneys worked tirelessly to investigate this case, battling obstructionist local Cleveland officials to get all the relevant evidence.

But in October 2020, we learned from reporting in the *New York Times* and the

² All three "experts" were discredited. The first, Kimberly Crawford, had a documented pro law-enforcement bias so extreme that DOJ rejected her analysis of the Ruby Ridge shooting because it was legally inaccurate and excessively pro-police. The second, Lamar Sims, had spoken at an event hosted by Prosecutor McGinty's office the year before and had previously made clear on television, before reviewing any of the evidence, that he believed the police officers were justified in killing Tamir. The third, Ken Katsaris, had been precluded from testifying multiple times by courts across the country. All three of these so-called "experts" made improper, outlandish, and speculative assumptions without any legitimate evidentiary basis in their attempts to exonerate the officers.

³ To try to correct the misleading record created by the prosecutors' "experts," the Rice family had to retain two nationally known law-enforcement experts, Roger Clark and Jeffrey Noble. Jeffrey Noble was a police officer for 28 years, including serving as Deputy Chief of Police of Irvine and Westminster, in California. Mr. Noble has extensive experience as an expert on police use of force and has been retained as an expert by many police departments across the country, including Chicago, San Francisco, and Austin. Roger Clark is a 27-year veteran of the Los Angeles County Sheriff's Department. Mr. Clark has been recognized as an expert in the police use of force in courts across the country and his work has been heavily relied on by courts, including the Fifth and Ninth Circuits Courts of Appeals.

Washington Post that a DOJ whistleblower had exposed what was really going on at DOJ.⁴ The whistleblower revealed that career attorneys in the Justice Department's Civil Rights Division—apolitical civil servants who conducted the investigation—*twice* sought to convene a federal grand jury to bring charges in this case. But both times those requests were stymied, apparently for political reasons by Trump appointees. They sat on the requests *for years*, when DOJ typically processes and grants such requests in a matter of weeks.

This tactic allowed Trump's DOJ to run the clock on the statute of limitations for obstruction of justice charges against Loehmann and Garmback—charges that should have been brought for their lies about Loehmann giving Tamir multiple commands to raise his hands before shooting him.

Only after the whistleblower exposed the tactic of silently killing this investigation, did DOJ finally come to Tamir's mother at the end of December 2020 and publicly announce their decision to formally close the investigation.

DOJ produced a self-serving memo to try to explain its decision by deceptively making this case seem complicated and difficult to prosecute. But the truth is that the actual facts, when stripped of pro-police bias, are indisputably straight-forward.

For example, the memo repeatedly credits the officers' self-serving testimony that they believed Tamir was reaching for the toy gun before Loehmann shot him. But nowhere does the memo address the obvious problems with this testimony, including that both Loehmann and Garmback clearly lied when they said that Loehmann had given Tamir multiple commands to raise his hands before firing. There is no question, based on the objective video evidence, that that was impossible. *Falsus in uno, falsus in omnibus*—a witness who lies about one fact is not credible on any fact.

The memo also fails to explain how the officers even had time to supposedly see and react to Tamir reaching for a toy gun, when the video is clear that Loehmann jumped out of the *still-moving car with his gun drawn* and fired immediately at Tamir.

The memo speculates that because the toy gun was found on the ground near where Tamir fell after he was shot, he must have “handled it after standing up beside the picnic table.” Not even Loehmann went this far so as to claim that Tamir was actually holding the gun. The video shows he was not. The toy was either in Tamir's pocket or waistband and was dislodged when Loehmann's bullet struck Tamir in the stomach and he fell to the ground.

Nor does the memo address why Loehmann and Garmback could have reasonably believed there to be any imminent danger to themselves or others (the threshold required for a police officer to use deadly force), when the video is clear that there was no one around Tamir when the officers drove up, and there was plenty of space and opportunity for the officers to

⁴ <https://www.nytimes.com/2020/10/29/us/politics/tamir-rice-shooting-investigation.html>; https://www.washingtonpost.com/national-security/tamir-rice-justice-department-investigation/2020/10/30/be8b60c8-1a35-11eb-aeec-b93bcc29a01b_story.html.

safely position themselves to give Tamir commands to raise his hands or drop the toy.

Again, the car was still moving when Loehmann killed Tamir—there was no reason Loehmann had to get out of the car, no reason the car had to stop there at all. All the police had at the time was a report of someone in a park with a gun (the caller in fact identified that the gun was likely fake and the person holding it likely a child, but the dispatcher did not relay this information to the police). Ohio is an open-carry state and, again, no one was near Tamir or in any danger when police sped into the park. This was not an active-shooter situation.

The Long-Standing and Systemic Excessive Force Problem in the Cleveland Police Division

The shooting of Tamir Rice did not happen in a vacuum. The Cleveland Police Division has a long history of systemic problems with excessive force generally and unjustified shootings particularly. Before Tamir was shot, DOJ had been monitoring the Cleveland Police Division (“Division”) for years, and investigating the Division for years more. In December 2014, under President Obama’s tenure, DOJ found there was reasonable cause to believe that the Division engaged in a pattern and practice of using unreasonable and unnecessary force. DOJ’s findings are scathing, highly relevant, and include the following:

- The Division has a widespread and longstanding problem with excessive use of force and unjustified shootings.
- Cleveland police officers fired guns at people who did not pose an immediate threat of death or serious bodily injury to officers or others, and Division officers used guns in a careless and dangerous manner.
- Cleveland police used unreasonable and excessive force on minor children, including one incident where an officer punched a handcuffed 13-year-old boy in the face several times after arresting him for shoplifting.
- Cleveland police officers too often escalated incidents instead of using accepted tactics to de-escalate tension.

The Shooting Officer Was Clearly Unfit for Duty

DOJ’s findings make clear that at the time of Tamir’s shooting, the Division had long-standing and systemic problems that included pervasive delinquency, incompetence, and indifference in the hiring and retention of competent personnel. Here, that incompetence resulted in the hiring of a police officer who never should have been carrying a gun and working in uniform. Astonishingly, the Cleveland police hired the shooter, Officer Loehmann, even though he was manifestly unfit for duty—after he had been effectively discharged from his first policing job for lying to his supervisors and having an emotional breakdown on the firing range that was so serious it resulted in his supervisor taking his gun away and recommending his termination, concluding: “It just appears that he is not mature enough in his accepting of responsibility or his understanding in the severity of his loss of control on the range . . . I do not believe time, nor training, will be able to change or correct these deficiencies.” Loehmann was a ticking time

bomb waiting to explode, but the Division nevertheless hired him.

DOJ Should Re-Open This Case

And so, we end where we began: the truth in this case is tragically simple.

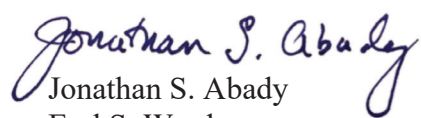
The essential facts are not in dispute. Officers Loehmann and Garmback drove into a park in a poor, predominantly Black neighborhood of Cleveland, at a high rate of speed. Tamir was sitting by himself; no toy gun was visible. There was no one else around. There was no immediate danger to anyone. But these officers asked no questions, gave no commands, made no attempt to secure the scene, de-escalate, or ascertain the facts. So eager was he to shoot, that Loehmann jumped out of the still-moving car and immediately shot the 12 year-old boy before him. His gun was already drawn and the safety was already off when he jumped out of the speeding car—the video is clear there was no time for him to draw the gun or remove the safety after he jumped out of the car. He shot, he shot precipitately, he shot unjustifiably, and he shot to kill.

If these police officers had driven into a park in a wealthy, predominantly White suburb, if the boy they saw sitting there under the gazebo was White—is there any doubt in anyone’s mind that that boy would still be alive today? But Tamir was Black and Tamir is dead.

For all these reasons, we ask that you re-open the investigation into the death of Tamir Rice. There is no statute of limitations on prosecuting Loehmann for killing Tamir in violation of his civil rights. *See* 18 U.S.C. § 242. In making this plea, we are mindful that no one can guarantee a conviction and that prosecutions against police officers present special challenges. But it is vital for DOJ to establish that those who enforce our laws are subject to our laws. The police must be held accountable and prosecuted for criminal wrongdoing. This case involves the unjustified killing of a child and a prosecution that was thwarted through political abuse. Fortunately, it is not too late to correct this manifest injustice. Our system demands that your office not turn a blind eye to what has occurred here and that this case be presented to a grand jury and prosecuted to the fullest extent of the law, as we understand Civil Rights Division career prosecutors sought to do for years. This case deserves to be presented to a grand jury without the agenda of exonerating the officers. Seek an indictment, and let the grand jury decide whether to do so. And, if they do, try the case so that this conduct can be judged impartially in a court of law, as justice requires.

We and Tamir’s mother, Samaria Rice, would be grateful for an opportunity to meet with you to further discuss this matter. Thank you for your consideration.

Respectfully submitted,



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