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afgazad@gmail.com

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Patrick Martin

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Biden Justice Department defends Trump-ordered police sweep through Lafayette Park

The Biden administration's Department of Justice (DoJ) argued in federal court Friday in support of the police-military sweep of Lafayette Park in front of the White House last June 1, carried out on the orders of President Donald Trump.

The sweep targeted more than 1,000 peaceful demonstrators against police violence who filled the park one week after the police murder of George Floyd in Minneapolis, Minnesota. Police used pepper balls and smoke grenades, as well as clubs and shields, to drive out the demonstrators.

After the violent police attack, which included the dispatch of federal paramilitary police into the square, Trump staged his notorious walk across the square from the White House, accompanied by several cabinet members and General Mark Milley, chairman of the Joint Chiefs of Staff.



Biden speaks at The Queen Theater, Thursday, Jan. 14, 2021, in Wilmington, Del. [Credit: AP Photo/Matt Slocum]

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afgazad@gmail.com

After crossing the park, Trump stood in front of St. John's Episcopal Church, brandishing a Bible. He was photographed and filmed in an appearance that became a photo-op used endlessly in the media, particularly Fox News and other pro-Trump outlets, and in campaign commercials.

The American Civil Liberties Union filed a lawsuit on behalf of the protesters against the Trump administration, singling out then-Attorney General William Barr, who apparently gave the actual order to clear the park. A hearing on a motion by the government to dismiss the lawsuit was held before Federal Judge Patricia Dabney Friedrich on Friday.

The Biden administration argued for dismissal of the protesters' lawsuit on two grounds. The first was the claim that the changeover to a new administration made the lawsuit moot, because Biden, unlike Trump, was not hostile to the demonstrations against police violence, and therefore there was no danger of a recurrence of the events of June 1.

The second argument was that the clearing of Lafayette Park was justified for reasons of presidential security—exactly the same claim made by Attorney General Barr in ordering the violent police sweep in the first place. Barr and other government officials had immunity from liability, the Biden administration argued, because they were performing “necessary functions” to secure a space for the president.

Arguing that “presidential security is paramount,” Department of Justice attorney John Martin told the court, “No officer has ever been denied immunity for clearing an area before an appearance by the president,” adding, “Federal officers do not violate First Amendment rights by moving protesters a few blocks, even if the protesters are predominantly peaceful.”

DoJ attorney David Cutler cited a 2004 Supreme Court ruling that Secret Service agents could not be sued for damages by antiwar protesters, who claimed their free speech rights were violated when they were moved two blocks away from a restaurant where President George W. Bush was having dinner. Cutler argued that, similarly, the plaintiffs in the Lafayette Square case “seek to hold the attorney general personally liable for damages for actions taken to ensure a safe perimeter for the president of the United States.”

This argument seemed to resonate with Judge Friedrich, who remarked, “To me, it seems quite obvious that you need to clear the square that he needs to walk through before he reaches the church. Why is that not reasonable for the defendants to do?”

Lawyers for the ACLU argued that the government defense was so sweeping and absolute that it would “authorize brutality with impunity.” ACLU-DC Legal Director Scott Michelman declared that the government “could have used live ammunition to clear the park, and nobody would have a claim against that as an assault on their constitutional rights.”

Another attorney appearing in the case, Randy Mastro of the high profile corporate law firm Gibson, Dunn & Crutcher, pointed to what he called “shifting explanations” for the order to clear Lafayette Park. The reasons given at various times included enforcing a curfew (which had not yet taken effect), stopping violence (although no violence had occurred until it was initiated by the police), and self-defense by the police (although there was no evidence of any attacks on them).

“Now we hear defendants saying, ‘Oh, this was about security for the president,’” Mastro said, “but no defendant suggests the president was at any time in any danger.” He pointed to the real motivation demonstrated by Trump’s own statements in calling on governors and mayors to “dominate your city and your state,” and threatening, “In Washington, we’re going to do something people haven’t seen before.”

“The conduct here was so flagrantly unlawful and so obviously unconstitutional that it requires a remedy,” Mastro continued. “And we are here today, your honor, to do everything we can to see that nothing like this ever happens again in our country.”

Given Mastro’s background—he was legal counsel to Rudy Giuliani during his two terms as mayor of New York, and at one point deputy mayor for operations, the day-to-day administrator of the city—he is hardly the most likely candidate for the role of outraged defender of democratic rights.

But the actions of Trump on June 1 clearly sent a shock wave through the US ruling elite, as the president threatened to invoke the Insurrection Act of 1807, declare martial law, and mobilize the military against the demonstrations over police violence. Both General

Milley and Secretary of Defense Mark Esper balked at the suggestion that the military should be called out onto the streets, a stance which apparently led to Esper's firing after Trump lost the presidential election.

It is not a surprise that Judge Friedrich, a longtime Republican, should show great sympathy for claims of executive power. She worked as an associate White House counsel in the Bush administration, where she defended extreme methods of interrogation, including torture. She was appointed to the federal bench by Trump in 2017, and her nomination was ratified 97-3 by the Senate, with most Democrats joining a unanimous Republican vote.

Far more significant is the support for Trump and Barr by the Biden Justice Department. During the election campaign, Biden adopted a posture of sympathy towards the protests over the George Floyd murder. But now, in court, Biden's legal representatives take their stance on the side of the would-be military dictator and his legal front man.

The previous week, the Justice Department sided with the position previously adopted by the Trump administration in refusing to release a legal memorandum to Barr on how to handle the 2019 release of the Mueller report into alleged Russian meddling in the 2016 presidential election. The Biden DoJ sided with Trump on the grounds of preserving executive branch secrecy.

In both cases, the Biden administration has in effect claimed that the president is above the law, entitled to keep documents secret from congressional and public scrutiny, and to order police violence against peaceful protesters.

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