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[Sent via email]

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Tennessee

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Re: Critical Compliance Requirements Under the Modified *Kendrick*
Consent Decree During National Guard Operations

We write to address the Memphis Police Department’s compliance obligations under the Modified *Kendrick* Consent Decree (Consent Decree) in light of President Trump’s Memorandum “Restoring Law and Order in Memphis” and the announced deployment of federal law enforcement and other agencies as well as National Guard troops to the city of Memphis.¹ As the sole plaintiff with enforcement authority over this decree, the ACLU of Tennessee (ACLU-TN) will be observing Memphis Police Department (MPD) activities to ensure strict adherence to the Consent Decree’s protections.

The Consent Decree represents nearly five decades of protection for Memphis residents’ First Amendment rights. Federal and National Guard involvement in local law enforcement does not diminish these protections—it makes strict compliance more critical than ever.

President Trump’s Memorandum establishes a “Memphis Safe Task Force” (Task Force) and directs the Task Force to “coordinate closely with State officials in Tennessee and local officials in Memphis to share information, develop joint priorities, and maximize resources” through “hypervigilant policing, aggressive prosecution, complex investigations, financial enforcement, and large-scale saturation of besieged neighborhoods with law enforcement personnel.” The Memorandum mandates coordination with local law enforcement and therefore creates multiple pathways for operational and agency confusion and potential violations of the Consent Decree that demand your immediate attention and preventive action.

Prohibited Joint Operations Under Section I

¹ <https://www.whitehouse.gov/presidential-actions/2025/09/restoring-law-and-order-in-memphis/>

Section I of the Modified *Kendrick* Consent Decree explicitly prohibits MPD from “encouraging, cooperating with, delegating to, or acting at the behest of any federal or state agency to conduct activities forbidden by the decree.” The Memorandum’s directive for “effective integrated action by Federal, State, and local law enforcement authorities” creates significant compliance risks, including the following:

Information Sharing Violations: Under Section H.2, MPD cannot share any “First-Amendment related intelligence”² about any individual with federal task force agencies, other agencies with which the Memorandum contemplates coordination, or National Guard units, even if such information was lawfully obtained during criminal investigations, unless the receiving agency is engaged in a parallel lawful criminal investigation of the same individual.

Coordinated Surveillance Prohibition: Sections F.2 and I together prohibit MPD from coordinating with or assisting federal task force agencies, other agencies with which the Memorandum contemplates coordination, or National Guard units in monitoring, photographing, or recording individuals at lawful meetings, demonstrations, or political gatherings for the purpose of maintaining records or chilling First Amendment rights, even if such activities would be permissible for federal forces acting independently.

Intelligence Coordination Restrictions: The Consent Decree’s prohibition on the gathering of “First Amendment-related intelligence” (Section B.5) extends to any coordination that would result in federal task force agencies, other agencies with which the Memorandum contemplates coordination, or National Guard units, conducting surveillance that MPD itself is forbidden from performing under Sections C.1 and I.

Specific Operational Compliance Requirements

Social Media Monitoring: While Section D.2 permits MPD to view public social media for “legitimate law enforcement purposes,”³ MPD cannot:

² “First Amendment-related intelligence” is defined as “the gathering, indexing, filing, maintenance, storage, or dissemination of information or any other investigative activity which is undertaken due to or on the basis of a person’s beliefs, opinions, associations or the content of the speech or expression protected by the First Amendment.”

³ “Legitimate Law Enforcement Purpose” is defined as “an activity conducted for the purpose of furthering the prevention of crime and/or ensuring the safety of the public and law enforcement personnel, while adhering to law and agency policy



- Share social media that contains First-Amendment related intelligence with federal task force agencies, other agencies with which the Memorandum contemplates coordination, or National Guard units unless related to a lawful criminal investigation by those agencies (Section H.2);
- Create joint protocols for monitoring social media accounts of activists or political organizations (Section I);
- Coordinate threat assessments that target individuals based on their political beliefs or associations in violation of Section B.5's definition of "First Amendment-related intelligence"⁴
- Retain First Amendment-related intelligence about an event on social media, or otherwise, once that event has passed, absent a legitimate law enforcement reason (Section D.3).

Event Security and Demonstrations: During joint operations at public gatherings, Section F.2 prohibits actions that chill First Amendment rights:

- MPD officers cannot direct or assist federal task force agencies, other agencies with which the Memorandum contemplates coordination, or National Guard units in photographing attendees at lawful political demonstrations "for the purpose of maintaining a record of persons exercising their First Amendment rights";
- MPD officers cannot record or direct National Guard or federal personnel to record license plates for First-Amendment intimidation purposes under Section F.2;
- Any MPD presence at First Amendment activities should be for public safety under Section F.3, not intelligence gathering, coordination with federal forces in violation of Section I, or any other purpose that "may reasonably have the effect of, harassment or intimidation."

Investigation Authorization Requirements: Section G's Director authorization requirements apply to any MPD involvement in joint investigations that may collect First Amendment-related information:

- Joint investigations that collect First-Amendment related intelligence require written MPD Director authorization under Section G.6 with 90-day limits per Section G.6;
- Authorization criteria under Section G.6 (unavoidable necessity, least intrusive methods, minimization precautions) apply regardless of federal leadership or involvement;
- Extension procedures under Section G.7 must be followed for any continuing joint operations.

designed to protect the privacy, free speech, association, and other civil rights and civil liberties of all people."

⁴ *Supra* note 2.

Electronic Surveillance and Technology Sharing: The Memorandum's emphasis on federal and National Guard coordination raises concerns about technology and information sharing:

- MPD cannot provide federal task force agencies, other agencies with which the Memorandum contemplates coordination, or National Guard units access to city surveillance systems if such access would facilitate First Amendment-related intelligence gathering prohibited under Section C.1;
- Body-worn camera footage from political events cannot be stored unless it contains evidence of criminal activity, per Section H.4.b;
- Body-worn camera footage from political events cannot be shared with federal task force agencies, other agencies with which the Memorandum contemplates coordination, or National Guard units except pursuant to Section H.2;
- Undercover social media account protocols cannot be coordinated with or shared with federal task force agencies, other agencies with which the Memorandum contemplates coordination, or National Guard units under Sections E.2 and I.

Compliance Officer Responsibilities: MPD's appointed compliance officers should:

- Review all operational protocols with federal task force agencies, other agencies with which the Memorandum contemplates coordination, and National Guard units for compliance with all sections of the decree;
- Establish clear guidelines for information sharing limitations under Section H.2;
- Monitor joint operations to prevent activities prohibited under Section I;
- Document compliance measures and any potential violations per the decree's requirements.

Constitutional Safeguards

The Consent Decree's fundamental purpose—protecting Memphians from unlawful government surveillance and intimidation—remains paramount regardless of federal or state National Guard involvement. The presence of these agencies or National Guard units cannot justify:

- Expanding surveillance of political activities beyond what MPD could lawfully conduct alone;
- Creating exceptions to information sharing restrictions;
- Bypassing Director authorization requirements for sensitive investigations;
- Intimidating or chilling the exercise of constitutional rights.

Immediate Action Required

We urge you to:

1. **Issue clear directives** to all MPD personnel regarding prohibited coordination with federal forces and state National Guard units.
2. **Establish written protocols** governing and strictly limiting information sharing with National Guard and federal task force members.
3. **Train MPD officers** on Consent Decree compliance requirements in joint operational settings.
4. **Implement oversight mechanisms** to monitor federal and federal-state coordination activities.
5. **Consult with compliance officers** before finalizing any joint operational agreements.
6. **Notify** ACLU-TN of all Section G authorizations issued in the last 30 days.
7. **Widely Re-Circulate** the Consent Decree website in social media and press outlets to alert residents as to how they can report alleged violations of the Consent Decree.

We remain committed to ensuring that all law enforcement activities in Memphis, whether conducted by local, state, or federal personnel, respect the constitutional rights that the Consent Decree was designed to protect. Any violations will be met with appropriate action to protect the rights of Memphis residents.

We trust you will take immediate steps to ensure full compliance with your ongoing obligations under the Modified *Kendrick* Consent Decree.

Regards,



Stella Yarbrough
ACLU-TN, Legal Director

