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Detroit Corporation Counsel Lawrence Garcia
Wayne County Prosecutor Kym Worthy

Lansing Police Chief Daryl Green
Lansing City Attorney James D. Smiertka
Ingham County Prosecutor Carol Siemon

Grand Rapids Police Chief Eric Payne
Grand Rapids City Attorney Anita Hitchcock
Kent County Prosecutor Christopher Becker

Kalamazoo Public Safety Chief Karianne Thomas
Kalamazoo City Attorney Clyde J. Robinson
Kalamazoo County Prosecuting Attorney Jeffrey S. Getting

Re: Arrest and Prosecution of Protesters

Dear Law Enforcement Officials:

We write to ask you to dismiss criminal charges brought against individuals who were arrested for their participation in recent protests calling for police reform. Officials who are serious about supporting their communities' demand for transformational change in policing should begin by ending the legal quagmires of those who were arrested for protesting police brutality. The vast majority of protesters, including individuals arrested in your jurisdictions over the past two weeks, peaceably assembled in public spaces to express their grief and anger over tragic acts of police violence. Criminal charges and citations in these cases should be dismissed.

People across Michigan, and across the country, are mourning the deaths of George Floyd, Breonna Taylor, Ahmaud Arbery and the seemingly endless list of unarmed Black people who have been killed in this country. There is widespread heartbreak and outrage at the structural racism in America—of which police brutality is only a small facet—that has devalued Black lives for over four centuries. Simultaneously, Michiganders are grappling with the more than 110,000 people, a disproportionate share of whom are Black, who have died from the COVID-19 pandemic in this country and an economic crisis that has disproportionately harmed Black communities. Michigan residents have responded by coming together to lift their voices, to pray, to question, to challenge, and to advocate for change. Some have done so in the face of curfews, believing that justice cannot wait. As our nation faces these enormous concerns, protection of the right to freedom of expression is vitally important.

Over the past two weeks, many Michiganders have engaged in the great American tradition of expressing protest and dissent. Most have done so through non-violent means fully protected by the First Amendment. There perhaps is no right more fundamental in a democracy than the right to gather and speak out against abuses of power by the government in traditional public forums. Streets and sidewalks are “prototypical” examples of public fora, and have immemorially been considered a rightful place for public discourse and political demonstrations. *Hague v. C.I.O.*, 307 U.S. 496, 515 (1939); *Am.-Arab Anti-Discrimination Comm. v. Dearborn*, 418 F.3d 600, 605 (6th Cir. 2005). Similarly, political expression related to public policy is the prototypical example of protected speech. *Texas v. Johnson*, 491 U.S. 397, 411 (1989). “[S]treets, sidewalks, parks and other similar public places are so historically associated with the exercise of First Amendment rights that access to them for the purpose of exercising such rights cannot constitutionally be denied broadly and absolutely.” *Poullon v. City of Owosso*, 206 F.3d 711, 716 (6th Cir. 2000) (citations omitted).

We are extremely concerned by the arrest and prosecution of protesters who have sought to exercise their First Amendment rights to freedom of speech, assembly, and to petition the government. These arrests are even more troubling in light of the many documented incidents in which these protests were met by a grossly disproportionate, aggressive response by armed law enforcement. There have been disturbing accounts and video footage of excessive force by police officers, including beatings, protesters being shot in the face with tear gas canisters and rubber bullets, and the indiscriminate use of pepper spray and tear gas against unarmed individuals and groups who posed no imminent threat to public safety.¹

Some local officials have said that a militarized police response—including early curfews, orders to disperse, mass arrests, the use of chemical agents, calling in the National Guard, and kenneling crowds—was motivated by a good-faith desire to protect public safety and private property, following incidents in which some people took advantage of the situation and became unruly or worse. But this interest, no matter how compelling, cannot justify disabling the vast majority of protesters who sought to exercise the fundamental constitutional “right of the people peaceably to assemble.” U.S. Const. amend. I. As the Supreme Court has warned, “Where certain speech is associated with particular problems, silencing the speech is sometimes the path of least resistance.” *McCullen v. Coakley*, 573 U.S. 464, 486 (2014). Nevertheless, restrictions on speech and protest must be narrowly tailored, with a close fit between their ends and means, to “prevent[] the government from too readily sacrificing speech for efficiency.” *Id.* (internal quotations omitted). These constitutional requirements were not met here.

¹ See, e.g., Violet Ikonomova, *Who Caused Violent Unrest? Detroit Police, Lawyers Say*, Deadline Detroit, June 2, 2020, <https://www.deadlinedetroit.com/articles/25427/who-caused-violent-unrest-detroit-police-lawyers-say>; J. Scott Park, et al., *Tear Gas and Tense Moments: 50 Compelling Photos from Police Brutality Protests in Michigan*, MLive, June 5, 2020, <https://www.mlive.com/news/2020/06/tear-gas-and-tense-moments-50-compelling-photos-from-police-brutality-protests-in-michigan.html>; Andrew Naughtie, *George Floyd Protests: Police Fire Tear Gas Canister at Unarmed Man After Macing Him*, The Independent, June 3, 2020, <https://www.independent.co.uk/news/world/americas/george-floyd-protests-michigan-police-tear-gas-mace-a9546636.html>.

The use of force against protesters, followed by mass arrests and prosecutions, also stifle urgently needed dialogue between citizens and government, and risk further inflaming tensions between communities and law enforcement. Now is a time for healing, which can begin with a demonstration of law enforcement officials' commitment both to the freedom of speech and the need to address the systemic injustice these protests have highlighted. The first step, which we urge you to take today, is to dismiss charges, or not to pursue prosecutions, in cases arising from the protests of the past two weeks.

Sincerely,



Dan Korobkin
Legal Director



Ayesha Elaine Lewis
Attorney

Cc: Attorney General Dana Nessel