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June 3, 2020

Brian L. Mackie  
Washtenaw County Prosecutor  
200 N. Main Street, Suite 300  
Ann Arbor, Michigan 48107

Re: Sha'Teina Grady El

Dear Mr. Mackie:

According to media reports you are considering whether criminal charges should be filed against Sha'Teina Grady El for events occurring during the early morning hours of May 26, 2020. We urge you not to press charges against her.

It is our understanding that Washtenaw County Sheriff's deputies responded to a call concerning gunshots and related disturbances in the Apple Ridge neighborhood of Ypsilanti Township. In the course of the deputies' investigation, one officer came into physical contact with Ms. Grady El, and a video recording of the event appears to show him striking her three times with force with his fist in or about her head. She was then placed under arrest.

By all accounts this event was factually complicated. It reportedly involved about 30 people. Not only were there reports of gunshots, but the actual whereabouts of the alleged shooter was unknown. It is reported that the deputies were denied entry to the house where the shooter was believed to be hiding. It is also alleged that the deputy's fist strikes were provoked by Ms. Grady El having bitten him on or about the arm as he attempted to take her into custody.

Given the factual complexity of this matter, as well as the fact that it remains under investigation, we will not attempt to offer a legal analysis. However, we are acutely sensitive to the tragic events of recent days related to the relationship of law enforcement to communities of African descent, and the fact that these events have induced global trauma. The anxiety, suspicion and distress have been compounded in Washtenaw County by the very disturbing video images of a police officer violently pummeling Ms. Grady El. In light of recent events throughout the country that have severely shaken community trust in law enforcement, we are concerned that the social harm of prosecuting Ms. Grady El will outweigh any benefits.

Prosecutorial discretion may be used for more than determining whether available evidence is sufficient for a conviction. A prosecutor may also make decisions based on what is in the best interest of society. In this case the pre-existing tensions between police and the black community will likely prompt enhanced suspicion and questions about every issue in the case. For example, even if a record establishes that Ms. Grady El committed aggressive acts, the public may forever have questions about whether under the circumstances the actions of the deputy were unlawful and she was within her rights to resist; or whether under any circumstances the response of the deputy was a disproportionate response to her actions. There will also be obvious questions about whether, because of the disparities in muscle and body mass, weaponry and training, the deputy's actions were inappropriate. Finally, Mr. and Ms. Grady El have stated in the media that deputies never explained the reasons for their actions, and the couple would have complied if an

explanation had been provided. Whether true or false, this assertion will create nagging questions and concerns in the community.

This case has obvious racial implications, and such issues need not be considered in a vacuum. One useful tool for analyzing them is *21 Principles for the 21<sup>st</sup> Century Prosecutor*.<sup>1</sup> This document recommends that prosecutors “address racial disparity.” The document states:

Extensive evidence shows that racial disparity exists at every stage of the justice system.<sup>2</sup> Possible causes include over-policing of communities of color, and overt and implicit bias. Prosecutors must confront these issues by looking closely at the relevant data and working to promote equity and a healthier, more cooperative relationship with the communities they serve.

The sources cited by the 21 Principles document explain the racial disparities with documented evidence of discriminatory policing, prosecution and sentencing. For example: African American drivers are twice as likely to be pulled over than white drivers; blacks are more likely to be searched when detained; they are more likely to be charged with serious crimes; and African Americans’ sentences tend to be four times longer than those given to white defendants.<sup>3</sup> Against such a backdrop, charging Ms. Grady El, an African American woman, for acts that were allegedly committed when she was physically attacked by a law enforcement officer in the midst of global upheaval regarding police misconduct serves no reasonable, useful purpose.

Sincerely,

/s/ Mark P. Fancher  
Mark P. Fancher  
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/s/ Gayle Rosen  
Gayle Rosen, Chair  
Washtenaw County Lawyers Committee  
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<sup>1</sup> The report can be found at:

[https://www.brennancenter.org/sites/default/files/publications/FJP\\_21Principles\\_FINAL.pdf](https://www.brennancenter.org/sites/default/files/publications/FJP_21Principles_FINAL.pdf)

<sup>2</sup> Evidence cited by the document for this proposition includes: . Frank R. Baumgartner, Derek A. Epp, Kelsey Shoub, *Suspect Citizens: What 20 Million Traffic Stops Tell Us About Policing and Race* (New York: Cambridge University Press, 2018); Stephen Demuth, “Racial and Ethnic Differences in Pretrial Release Decisions and Outcomes: A Comparison of Hispanic, Black, and White Felony Arrestees,” *Criminology* 41 (August 2003): 898; David Arnold, Will Dobbie, and Crystal S. Yang, “Racial Bias in Bail Decisions,” *Quarterly Journal of Economics* (forthcoming): 3, <https://doi.org/10.1093/qje/qjy012>; Marvin D. Free, Jr., “Racial Bias and the American Criminal Justice System: Race and Presentencing Revisited,” *Critical Criminology* 10 (October 2001): 195–223; L. Song Richardson and Philip Atiba Goff, “Implicit Racial Bias in Public Defender Triage,” *Yale Law Journal* 122 (June 2013): 2106–720; Cassia Spohn, “Race, Sex, and Pretrial Detention in Federal Court: Indirect Effects and Cumulative Disadvantage,” *University of Kansas Law Review* 57 (2009): 898–99; Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2012);, Anthony G. Greenwald and Linda Hamilton Krieger, “Implicit Bias: Scientific Foundations,” *California Law Review* 94 (July 2006); L. Song Richardson, “Police Efficiency and the Fourth Amendment,” *Indiana Law Journal* 87 (Summer 2012): 1145.

<sup>3</sup> See footnote 2.