



WASHINGTON LAWYERS' COMMITTEE
FOR CIVIL RIGHTS AND URBAN AFFAIRS

October 6, 2020

Attorney General Karl Racine
Office of Attorney General
441 4th Street, NW,
Washington, DC 20001

Dear Attorney General Racine,

We are writing this letter on behalf of Black Lives Matter DC (“BLM DC”), to urge you to drop the protest-related charges that fall within the jurisdiction of the Office of Attorney General (OAG).

After the horrifying killings of Breonna Taylor and George Floyd, protesters gathered in D.C., as they did across the country, to address police brutality and the injustices within the criminal legal system. They were met with the very type of brutality they opposed, and then punished further with mass arrests against those who used their voices to create change.

On May 29, protests began here in the District, with hundreds of people marching to the White House. It has been well documented that, as demonstrations continued throughout the week, protesters were assaulted with tear gas, pepper spray, and rubber bullets. In response, Mayor Muriel Bowser issued a city-wide curfew that lasted four days. While the curfew was in place, nearly five hundred protesters were arrested, mostly for curfew violations.

After months of continuing protests, Mayor Muriel Bowser held a press conference urging the United States Attorney Office (USAO) to charge and prosecute more protesters, sending a message that D.C. is indifferent to the deeply flawed and racist elements of our criminal justice system that the protesters seek to change. The USAO publicly condemned some of the Metropolitan Police Department’s (MPD) tactics during the demonstrations. While most of the protest-related cases fall within the USAO’s jurisdiction, some of the cases, specifically the curfew violations, are within your office’s jurisdiction. Dropping the protest-related charges that will otherwise cause outsized and unnecessary damage to hundreds of persons is a critical step to building public confidence that D.C. and your office, in particular, are genuinely committed to racial justice. We, therefore ask that your office take affirmative steps, such as those identified below, to mitigate the well-known serious collateral consequences that come with an arrest and possibly a conviction, including barriers to housing and employment. Taking these steps are necessary to reduce the harm BLM DC members and others – primarily Black people and persons of color -- experience as a result of law enforcement activity whose purpose was not to protect the public, but to punish them for exercising their First Amendment rights to speak and assemble.

There is no doubt that the curfew-related arrests had no legitimate law enforcement objective but were undertaken to chill and punish protest. Legal observers and bystanders witnessed officers selectively enforce the curfew. Residents who were in the upper northwest, for example, violated the curfew with impunity and experienced no repercussions. By contrast, on June 1, the City witnessed MPD engage in the use of military tactics against protesters. MPD corralled nearly two-hundred protesters at the intersection of 15th and Swann Streets, where they proceeded to use a chemical agent on the protesters. There is no suggestion that these protesters were doing anything beyond simply expressing their views; most of the people arrested that night were only charged with violating the curfew.

What happened at Swann Street is not an isolated incident. During the 2017 inauguration, MPD used similar tactics to kettle hundreds of protesters. This tactic was called into question by the City Council and investigated by the Office of Police Complaints. All similar charges against the protesters from the 2017 inauguration were dropped. As protests continue to occur throughout the City, the pattern of kettling, arresting, and then releasing protestors, often, but not always with dropped charges, continues. For example, we witnessed it again on August 14 in Adams Morgan and on August 31 at Black Lives Matter Plaza. We are in a moment where all eyes are on the injustices that permeate the criminal legal system. It is vital that the District does not directly or indirectly participate in perpetuating these injustices. Taking the lead and dropping the charges for curfew violations is an extremely critical and meaningful way for the District to truly show its residents that Black Lives Matter. This is an opportunity that the OAG can and should seize upon to show that it genuinely stands with BLM DC, its members, and many other D.C. residents who demand a more just system.

This is not just a matter of principle. The consequences to protestors of bogus arrests and charges are likely long term. The arrests and charges are now a matter of public record. Those records may prevent these individuals from obtaining housing and employment— prerequisites for stability, success, and even basic survival. When individuals do not have access to adequate housing and employment, it prevents them from surviving in our society. It forces people to find ways to provide for themselves outside of conventional avenues. It also creates unnecessary and often debilitating financial burdens. Paying for attorneys and other fees associated with a criminal case can create a cycle of debt that forces individuals to choose between paying fines or fees and paying for housing and food. These consequences have undeniable racial justice implications: it is well established that criminal record bans invoked by landlords and employers to deny housing and employment have a disproportionate impact on Black people and persons of color. Your office should take the steps within its authority to reduce the racially disparate harm of an inequitable criminal system.

The District will not be alone in deciding to dismiss protest-related charges. In Houston, the Harris County District Attorney dismissed eight hundred cases filed against protesters a week after the protests began in Houston. The District Attorney stated the cases were being dropped in the interest of justice. In Portland, nearly sixty cases were

dismissed, including arrests for purported felony rioting, arson, and theft. Other cities such as Louisville, Los Angeles, and Fort Worth made a similar decision in the interest of justice. We believe the OAG should take a similar stance and dismiss all the protest-related charges that fall within the OAG's jurisdiction.

We would expect that your office will promptly notify the charged individual of a decision to drop the charges. Notification will mean that the individuals will know not to come to court. This should be done not only as a courtesy to those arrested but also in the interest of public health and safety. Notification will eliminate any confusion surrounding their case. Due to the pandemic, the courts postponed all noncustodial in-person hearings. Originally, more than three hundred people had court dates in October, which have been moved to March. Recently, members of the National Lawyers Guild and Law 4 Black Lives DC talked to dozens of protesters arrested on June 1. Several were unaware that their case date has changed. DC is still dealing with the COVID-19 pandemic. Notifying individuals will prevent hundreds of individuals going in and out of court and lower the risk of exposure to the disease.

However, it is not enough to dismiss the charges. The OAG should take affirmative steps to facilitate prompt sealing of records of the people who were arrested. Arrest records and charges are in the public record. Potential employers and landlords will be able to search these records. According to D.C. Code § 16-803, individuals must wait two years after their case has been resolved before filing a motion to seal certain criminal records. However, the Code states that the waiting period to file a motion to seal can be waived by your office. In order to alleviate the collateral consequences from these arrests, we urge you to take the following steps: (1) notify persons whose charges have been dismissed of their opportunity to seal their records and the steps they must take to do so; and (2) make clear that your office will exercise the discretion it has to waive any applicable waiting periods in order to expedite the process. Furthermore, we suggest your office partner with an organization, such as the Public Defender Service, to assist individuals with their sealing motions, to the extent possible. For individuals who are on parole or probation, we ask that you provide them with a letter opposing violation orders. Finally, we ask that the OAG make a public commitment that it will not prosecute curfew violations in the future. Such a policy decision will avoid recurrence and send a strong positive message to the community.

The protests across the nation addressing structural racism within the criminal legal system have been met with an unprecedented military response that other protests have not seen. It is hard to ignore the glaring fact that, when Black Lives Matter protesters come together to speak against racism and injustice in America, they are met with tear gas and rubber bullets. Yet, when white supremacists came to D.C. the City, they were given police escorts and a private metro train. If the District wants to show its residents that the criminal justice system is changing, we cannot reinforce the same structures and institutions that the protesters and racial justice movement seek to change. As Representative John Lewis said, "When you see something, that is not right, not just, not fair, we have a moral obligation to say something, to do something." Centuries of

harm from an unfair criminal justice system cannot be undone overnight. But if your office takes steps to dismiss these charges, it will show District residents that the phrase “Black Lives Matter” is more than a mural.

We would appreciate hearing your decisions with respect to the above requests and would welcome an opportunity to discuss how your office and advocates can work together moving forward. Please let us know if you would be available to get together for such a discussion, and let us know if you have any questions about the content of this letter. You can reach us at marques_banks@washlaw.org and tristin_brown@washlaw.org.

Sincerely,

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