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SENT VIA EMAIL

Eric Graninger
First Assistant County Attorney
Jefferson County Attorney's Office
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Amy Hess
Chief of Public Safety
Louisville Metro Government
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RE: Unlawful Use of Checkpoints and Movement Restrictions

Dear Mr. Graninger and Ms. Hess:

In light of Mayor Fischer's imposition of a new curfew order,¹ we write to express our concerns that the Louisville Metro Police Department ("LMPD") may use the access restrictions placed downtown yesterday² to subject Kentuckians to unconstitutional and unlawful restrictions upon their freedom of movement. We applaud efforts by LMPD and Louisville Metro Government to create a safe area for protest and other protected First Amendment activity following the Attorney General's announcement in the investigation of Breonna Taylor's killing. We fear, however, that this same infrastructure used to secure protester safety could also be employed to facilitate the mass arrest of peaceful demonstrators.

The experiences of people marching for racial justice in Louisville this summer have unfortunately demonstrated LMPD's willingness to respond to peaceful protest with violence and arrests. At the large protests in late May and early June—the last time a curfew order was in effect—LMPD officers often employed a tactic of blocking roadways to prevent people at a protest from exiting the area, indiscriminately using tear gas and pepper bullets against these

¹ Mayor Greg Fischer, Exec. Order No. 2020-016 (Sept. 23, 2020), https://louisvilleky.gov/sites/default/files/mayors_office/news_images/eo_2020-016_-_protest_curfew_1.pdf.

² See LMPD (@LMPD), TWITTER (Sept. 22, 2020, 3:30 AM), <https://twitter.com/LMPD/status/1308307564933910530?s=20>; LMPD (@LMPD), TWITTER (Sept. 22, 2020, 7:54 AM), <https://twitter.com/LMPD/status/1308374150617194496?s=20>.



crowds for their resulting “failure to disperse,” and then rounding up many of these protesters in mass arrests. LMPD officers, moreover, often used the approaching curfew as a pretext for declaring peaceful assemblies unlawful and engaging in these violent tactics.

You can, therefore, understand our concern that LMPD may intend to use the concrete street barriers and regulated access points into downtown³ as a means of controlling all ingress and egress from the area—and to trap and arrest protesters as they try to escape police violence or return to their homes and vehicles.

Irrespective of any curfew or other police directive, people who choose to engage in First Amendment activity within the concrete barriers downtown have a constitutional right to leave that area, and pursuant to the Fourth Amendment can only be stopped from doing so if police have an individualized reasonable suspicion of criminal wrongdoing. The United States Supreme Court has made clear that police may not employ checkpoints “whose primary purpose [i]s to detect evidence of ordinary criminal wrongdoing.” *City of Indianapolis v. Edmond*, 531 U.S. 32, 41 (2000). And the Kentucky Supreme Court has elaborated that checkpoints established to detect violations of a city ordinance fall within this class of impermissible “general crime control” checkpoints. *Singleton v. Commonwealth*, 364 S.W.3d 97, 104–06 (Ky. 2012). Using designated access points to prevent protesters from leaving an area—or arresting them for curfew violations as they attempt to pass through those access points—likely runs afoul of these constitutional prohibitions. Indeed, doing so would impermissibly allow LMPD to detect, without individualized reasonable suspicion, whether any given pedestrian within the barricaded area was allowed to be present under one of the exceptions to the curfew order.

Louisville residents—and particularly Black Louisvillians who have long faced aggressive overpolicing by LMPD—have little reason to trust LMPD or Mayor Fischer’s declarations that protester safety is the reason for these restrictions. We fervently hope that LMPD does not give further justification to these fears in its response to the coming demonstrations by using these barriers and barricades as pretextual checkpoints to arrest protesters for violating the curfew.

Sincerely,

³ See *Downtown road closure information*, LOUISVILLEKY.GOV (Sept. 22, 2020), <https://louisvilleky.gov/news/downtown-road-closure-information>.



A handwritten signature in black ink, appearing to read "Corey Shapiro". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Corey Shapiro
Legal Director