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July 7, 2020

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SENT VIA EMAIL

Re: Dismissing Cases Related to Recent Protests and
Executive Orders Under the COVID-19 Public Health Crisis

Dear District Attorneys:

Over the last few weeks, we have seen an inflection point in our reckoning with this country's white supremacist history. The deaths of Black people killed at the hands of police officers have led to unprecedented calls for police accountability and a wholesale reimagining of the role of the police. In the midst of a health pandemic that has both highlighted and exacerbated the harms caused by centuries of institutionalized racism, New Yorkers have taken to the streets to protest not only recent instances of police brutality, but also a legacy of deep structural racism. In many instances, the New York City Police Department met these protests with the same violence and brutality that gave rise to them in the first place.

Since late-May, the NYPD has arrested thousands of people in response to these protests. Most of these people were incarcerated for hours without food or water, and many nursing injuries, before being released with a summons or desk appearance ticket directing them to appear in court in September or October. Hundreds more were held at central booking for arraignment and now face prosecutions by your offices. The recent protests erupted following weeks of controversial policing of social distancing enforcement measures that disproportionately impacted Black and Latinx communities.¹

The blatant misconduct of NYPD officers in response to the protests was on full view in viral videos and documented through witness accounts, personal observations, and written testimony.² The NYPD's conduct calls into question the viability of criminal prosecutions arising from these arrests. A letter signed by 50 Bronx Assistant District Attorneys directly questions the integrity of these arrests: "Nearly every ADA represented in this letter has encountered an incident in the complaint room where an officer has used unwarranted force."³ An investigation into the NYPD's response to the protests has been initiated by the Office of the Attorney General.⁴

As the primary defenders and legal services providers for the city, and in partnership with volunteer attorneys from the NYC Chapter of the National Lawyers Guild, we write to demand

¹ See Rocco Parascandola, *Lawyers Press for End to NYPD Enforcement of Social Distancing, Probe of Racial Disparities in Arrests and Summonses*, NY DAILY NEWS (May 26, 2020) <https://www.nydailynews.com/coronavirus/ny-coronavirus-social-distancing-nypd-court-action-20200526-rfn5quizlbfy5he2lg5fe6kiwi-story.html>; see also Legal Aid Society, *Racial Disparities in NYPD's COVID-19 Policing* (May 2020), report available at <https://legalaidsoc.org/racial-disparities-in-nypds-covid-19-policing/>; see also, Isaac Scher, *There Have Been 20 Social-Distancing Arrests in Queens This Week. 16 Were Black or Hispanic.*, BUSINESS INSIDER (May 8, 2020) <https://www.businessinsider.com/nypd-social-distancing-arrests-race-queens-2020-5>.

² New York State Attorney General, *Attorney General Letitia James' Virtual Public Hearings on Police and Public Interactions During Protests in the Wake of George Floyd's Death*, videos available at <https://ag.ny.gov/nypd-protest-response#video>.

³ Noah Goldberg & Thomas Tracy, *Bronx Prosecutors Demand DA's Office Combat Police Brutality Following George Floyd Protests*, NY DAILY NEWS (June 16, 2020) <https://www.nydailynews.com/new-york/ny-bronx-adas-letter-darcel-clark-nypd-violent-arrests-20200616-szk24gspcbaqlsg5wq72se5qe-story.html>.

⁴ New York State Pressroom, *Governor Cuomo Announces Attorney General James Will Review All Actions and Procedures Used During Last Night's Protests in New York City* (May 30, 2020) <https://www.governor.ny.gov/news/governor-cuomo-announces-attorney-general-james-will-review-all-actions-and-procedures-used>.

that you dismiss and decline to prosecute *all* criminal cases arising from arrests related to or made during the recent protests for racial justice, including those that resulted in summonses, desk appearance tickets, and criminal arraignment.

According to information provide by the NYPD to *Gothamist* reporters, as of June 10, 2020, there were nearly 2,500 arrests and detentions related to the protests between May 28 and June 7 alone, including 1,349 summonses for curfew violations and 1,126 additional arrests for mostly “non-violent offenses” ranging from “burglary to unlawful assembly.”⁵ Of the arrests and detentions, 39 were for “assaulting an officer.”⁶ Over 60% of the curfew-related summonses were issued to Black or Latinx people.⁷

As it stands, some of your offices have made public promises to dismiss and/or decline to prosecute certain protest-related cases.⁸ These promises, however, do not go nearly far enough:

- The Manhattan District Attorney announced a policy of declining to prosecute unlawful assembly and disorderly conduct charges.⁹
- The Kings County District Attorney said his office would decline to prosecute cases “where a person was only charged with unlawful assembly or with violating curfew.”¹⁰
- The Bronx District Attorney reportedly determined to “decline[] to prosecute protesters accused of unlawful assembly or violating the curfew” and that “[a] summons [would be issued] in such cases instead.”¹¹
- The Queens District Attorney quoted Manhattan District Attorney Vance’s June 4, 2020 tweet announcing his office’s policy, stating: “We are proud to be a united front on this issue.”¹²

It is not clear which cases are actually covered by your respective offices’ policies. For example, most people arrested for violating curfew were issued summonses. Disturbingly, it seems that *none* of the charges prosecuted by way of summons – as opposed to desk appearance ticket or criminal arraignment – have been dismissed by your offices. If true, that would be consistent with the long-standing policy adopted by many of your offices not to take a position in the prosecution of summons cases, leaving them entirely to the discretion of the NYPD and the courts. **You each have the authority to prosecute, decline to prosecute, or dismiss *all* the cases within your jurisdictions, including summons prosecutions.** We ask you to exercise that discretion.

⁵ See Syndey Pereira & Gwynne Hogan, *NYPD’s Historic Mass Arrest Campaign During George Floyd Protests Was Mostly For Low-Level Offenses*, *Gothamist* (June 10, 2020) <https://gothamist.com/news/nypds-historic-mass-arrest-campaign-during-george-floyd-protests-was-mostly-low-level-offenses>.

⁶ *Id.*

⁷ *Id.*

⁸ On June 5, 2020, *The New York Times* reported that “[d]istrict attorneys in Manhattan, Brooklyn and the Bronx will not prosecute people arrested and accused of low-level offenses in the protests.” *Some N.Y.C. Protests Ended Quietly. Others Ended in Arrests.*, *NY Times* (June 5, 2020) <https://www.nytimes.com/2020/06/05/nyregion/nyc-protests-george-floyd.html>.

⁹ Manhattan District Attorney’s Office, *D.A. Vance Declines to Prosecute Protest Arrests* (June 5, 2020) <https://www.manhattanda.org/d-a-vance-declines-to-prosecute-protest-arrests/>.

¹⁰ *Id.*

¹¹ *Id.*

¹² Queens District Attorney Katz (@QueensDAKatz), Twitter (June 6, 2014, 9:55 AM), <https://twitter.com/QueensDAKatz/status/1269266732302073856?s=20>.

To date, it appears that a small portion of the protest-related cases have been dismissed. For example, at a June 25, 2020 Justice Task Force Meeting, the Manhattan District Attorney's Office indicated that it had dismissed 169 protest-related cases under its policy – a small percentage of the total cases in that borough. There is a backlog of 39,200 criminal cases pending in courts across New York City.¹³ It is also our understanding that there is a backlog of desk appearance tickets amounting to thousands more cases – with a backlog of 5,000 desk appearance tickets in Manhattan alone. Justice has been delayed and due process compromised for all of those charged with crimes because of the COVID-19 pandemic. The arrests made by NYPD in response to the protests will only serve to exacerbate this mounting crisis.

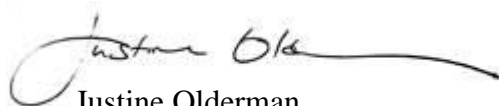
To this end, we also request that you dismiss *all* criminal cases related to or arising from the enforcement of executive orders during the COVID-19 public health crisis. On May 8, 2020, your offices announced that you would decline to prosecute criminal cases related to or arising from the enforcement of executive orders under the COVID-19 public health crisis.¹⁴ However, to date, as far as we know, the majority of those cases remain pending. We have not received confirmation as to which cases have been or will be dismissed, or as to whether your offices' promises to decline to prosecute these cases includes *all* summons, desk appearance tickets, and pending criminal cases.

The mere act of an arrest may have a profound negative effect on a person in myriad ways, from loss of employment to deportation. Considering this unprecedented situation, we need to know:

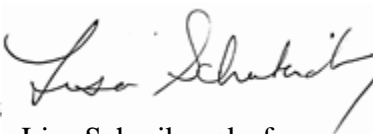
- precisely which cases you are dismissing and declining to prosecute,
- which cases you are not, and
- when and how you intend to communicate with our clients, and counsel, regarding the dismissals.

We strongly urge all New York City District Attorney's offices to dismiss *all* protest-related and social distancing enforcement cases, and to do so with transparency so that we as defenders may counsel our clients accordingly.

Sincerely,



Justine Olderman
Executive Director
The Bronx Defenders



Lisa Schreibersdorf
Founder & Executive Director
Brooklyn Defender Services



Tina Luongo
Attorney-In-Charge
Criminal Defense Practice
The Legal Aid Society

¹³ Alan Feuer, Nicole Hong, Benjamin Weiser & Jan Ransom, *N.Y.'s Legal Limbo: Pandemic Creates Backlog of 39,200 Criminal Cases*, NY TIMES (June 22, 2020) <https://www.nytimes.com/2020/06/22/nyregion/coronavirus-new-york-courts.html>.

¹⁴ Jake Offenhartz, *NYC District Attorneys Won't Prosecute Social Distancing Arrests Ordered by De Blasio*, GOTHAMIST (May 11, 2020) <https://gothamist.com/news/nyc-district-attorneys-wont-prosecute-social-distancing-arrests-ordered-de-blasio>.



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cc: NYPD Commissioner Dermot Shea
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