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aclu-wi.org

## Wisconsin

September 8, 2020

Josh Kaul, Attorney General  
Wisconsin Department of Justice  
PO Box 7857  
Madison, WI 53707-7857  
SENT VIA EMAIL Josh.Kaul@doj.state.wi.us

Dear Attorney General Kaul:

On August 28 we wrote to urge that you open investigations into “any crimes or civil rights violations committed against protesters, journalists, medics, legal observers, and others by federal, state, or local law enforcement to interfere with the exercise of their constitutional rights to protest systemic racism and police violence in Wisconsin.” Although ten days have passed, we have not heard whether you have opened the requested inquiries.

In the time since our original letter, there have been additional documented instances of violations of civil rights of protesters and the press by law enforcement in Kenosha. Additionally, we have received additional documentation regarding the lack of a legal basis for the Kenosha curfew and the abuses in enforcing that curfew.

***The curfew was illegal.*** Law enforcement arrested at least 94 people for curfew violations in Kenosha on the nights between August 23 and September 2, yet the curfew was never legally promulgated. The curfew times were announced by the Office of the Sheriff of Kenosha County, but the sheriff lacked authority to issue a curfew. Under Wisconsin law, an emergency measure, like a curfew, requires an action of the local government, in this case the County Board or the County Executive. Wis. Stat. § 323.14(4). The Board never met, and the County Executive was out of the state on vacation during that period. See Ex. A., Email from Joseph A. Cardamone, III, Kenosha County Corp. Counsel dated Sept. 4, 2020 (“Following up on your written request dated August 28 for ‘any resolution or action taken by the County Board or the County Executive to put the curfew in place,’ no responsive documents exist”). The sheriff has no power under Wisconsin law to unilaterally declare a curfew.

The City of Kenosha Common Council did not vote to declare a state of emergency and give emergency powers to the mayor until August 25, 2020. Ex. B, copy of resolution. We are unaware, however, of the mayor issuing a proclamation which declared the terms of any curfew such as its geographic scope, who was subject to the curfew, and whether there were exceptions to health care workers, the press, legal observers and others.

Without a properly enacted curfew, all curfew violation charges are fatally flawed. We call on the Kenosha County District Attorney to immediately dismiss all pending charges for curfew violations.

***The illegal curfew was enforced in a discriminatory and arbitrary manner.*** There were at least 94 citations issued for curfew violations between August 23 and September 2. From our observation and

other reports, it appears that the vast majority of citations, if not all, were issued to people advocating for racial justice or protesting police bias and brutality.

On the other hand, white militia members carrying semi-automatic weapons after the curfew were not cited. As you know, this included local law enforcement not arresting Kyle Rittenhouse as he walked past them after just shooting and killing two people on the streets of Kenosha.

This discriminatory enforcement of the illegal curfew, which clearly is related to whether the police agreed or disagreed with the message of the persons arrested, reflects clear retaliation for exercise of first amendment rights of expression and assembly. Such retaliation resulted in arrested persons spending hours, and in some cases more than a day, in police lock-ups in violation of their rights. We call for an immediate investigation and accountability for those responsible for such discriminatory enforcement of the curfew.

***The militarized response to protests used excessive force.*** Despite having 1,500 National Guard troops from Wisconsin and three other states, military armored vehicles and hundreds of personnel from at least 40 law enforcement agencies, authorities still resorted to excessive force against the demonstrators in Kenosha. As detailed in our first letter, law enforcement agents used militarized tools and tactics, tear gas, pepper spray, rubber bullets, sonic weapons, and pepper balls indiscriminately against demonstrators.

There is ample video footage by traditional and independent media of the excess force deployed against persons exercising their constitutional right to assemble and demonstrate in front of the Kenosha County Courthouse. At a location which should be a source of justice, law enforcement systematically violated the First and Fourth Amendment rights of demonstrators. We call on your office to review that footage and conduct further investigation to hold those in command accountable for the use of indiscriminate and excessive force during the course of the Kenosha demonstrations.

***An investigation by the Department of Justice is imperative.*** Your office is currently leading an investigation into the shooting of Jacob Blake by the Kenosha Police. We hope that that investigation will be rapid and provide accountability, but there are many more examples of use of force and illegal actions by law enforcement in the days following.

It should be obvious that the Kenosha Sheriff and the Kenosha Police Department cannot investigate these events. Virtually the entire contingent of personnel of both agencies were involved in these events. For the same reasons that you are investigating the shooting of Jacob Blake, you must undertake an investigation of the subsequent events in Kenosha.

Thank you for your attention to this urgent matter. Please do not hesitate to contact me with any questions.

R. Timothy Muth  
Staff Attorney  
ACLU of Wisconsin

Molly Collins  
Advocacy Director  
ACLU of Wisconsin

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**Documents relating to Emergency Declaration and Curfew**

14 messages

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**Joseph Cardamone**  
To: "R. Timothy Muth"

Fri, Sep 4, 2020 at 5:52 PM

Attorney Muth:

Following up on your written request dated August 28 for "any resolution or action taken by the County Board or the County Executive to put the curfew in place," no responsive documents exist. As a courtesy I am including the following documents:

- The City of Kenosha declared a State of Emergency on August 25, 2020. A copy of Resolution 134-20 from the City of Kenosha is attached.
- Sheriff David Beth declared a State of Emergency on August 24, 2020. A copy of this Declaration of Emergency is attached.
- The Sheriff's Department issued media releases for the State of Emergency Curfew for August 24<sup>th</sup> through September 2<sup>nd</sup>. Copies of the media releases are attached.

Sincerely,

Joseph M. Cardamone III

Corporation Counsel

Kenosha County Corporation Counsel's Office

[912 56th Street](#)

[Kenosha, WI 53140](#)

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RESOLUTION 134-20

SPONSOR: THE MAYOR

DECLARATION OF EMERGENCY REGARDING CIVIL UNREST  
GRANTING ADDITIONAL AUTHORITY TO THE MAYOR

WHEREAS, since August 23, 2020, the City has been experiencing riotous activity, and

WHEREAS, such riotous activity has included burning building premises, burning of personal property, burning of government property, vandalism and otherwise damage producing activity, and

WHEREAS, such riotous activity has resulted in personal injury, and

WHEREAS, despite the efforts of law enforcement, specifically including the City of Kenosha Police Department in addition to assistance been provided by the Kenosha County Sheriff, Wisconsin State Patrol, other law enforcement jurisdictions, and the Wisconsin National Guard, such riotous activity has continued and is anticipated to continue for the foreseeable future.

NOW, THEREFORE, BE IT RESOLVED, pursuant to Wisconsin Statutes, §323.11, the Common Council for the City of Kenosha declares an emergency in the City of Kenosha.

BE IT FURTHER RESOLVED, that the Common Council for the City of Kenosha grants to the Mayor for his personal exercise, only, for a period of seventy-two hours (72) from the adoption of this resolution or 5:00 P.M. on August 28, 2020, powers associated with authority of a Mayor in an emergency situation identified in Paragraphs 1.145A. 1- 13 of the Code of General Ordinances, and if extension of this Declaration is desired, the Mayor shall convene the Common Council for an in-person meeting with a virtual attendance option, with notice for the option that the meeting may go into closed session.

Adopted this 25th day of August, 2020.

ATTEST: Karen J. August  
KAREN J. ARGUST, Acting City Clerk/Treasurer

Date: 08/27/2020

APPROVED: [Signature]  
JOHN M. ANTARAMIAN, Mayor

Date: 08/27/2020

Drafted By:  
EDWARD ANTARAMIAN  
City Attorney