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Wisconsin

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Josh Kaul, Attorney General
Wisconsin Department of Justice
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Dear Attorney General Kaul:

The American Civil Liberties Union of Wisconsin (ACLU-WI) strongly urges you to investigate, or appoint a special counsel to investigate, and, if warranted, prosecute 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. We are particularly concerned about the extreme and militarized law enforcement response to those protesting the shooting of Jacob Blake in Kenosha.

Obviously, there are useful roles that law enforcement can play in preserving the peace and protecting protestors. However, all too often certain segments of law enforcement have crossed the line, particularly in response to the ongoing protests in Kenosha, where Kenosha sheriff's deputies and Kenosha police department officers have been engaging in a militarized response to protests that raise significant concerns.

Creating even more concern, our understanding is that the Governor has agreed to allow federal forces to be sent to Kenosha. Given the lawlessness of the federal forces' actions against protesters that we have seen in other places, especially Portland, we strongly urge you to ensure that all federal, state, and local officers deployed in response to the protests for racial justice in Kenosha understand that they will be held accountable for any attack against protesters, journalists, legal observers or medics.

Since the murder of George Floyd by Minneapolis Police on May 25, 2020, protesters have gathered daily in Wisconsin and across the country to express their outrage at the murders of George Floyd, Breonna Taylor, and other Black people killed by law enforcement. On August 23, 2020, in just the most recent example, a Kenosha police officer shot Jacob Blake at least seven

times, apparently as he was walking away after breaking up a fight.¹ This, of course, sparked increased protests in Kenosha. Unfortunately, the Kenosha Police Department and the Kenosha Sheriff's Department have reacted in a militarized way to protestors. Most notably, when right-wing extremists arrived at the protests armed with automatic weapons, Kenosha law enforcement greeted them warmly, provided them water, and failed to enforce the curfew against them—even while aggressively enforcing the curfew against protesters.

A white person, Kyle Rittenhouse, then allegedly shot three protesters, killing two of them—and even though he was underage and walked down the street with his weapon, law enforcement let him go home that night. Meanwhile, Jacob Blake, a Black man shot by Kenosha police officers when he did not even have a weapon in his hands, is paralyzed, and also has unconscionably been handcuffed to his hospital bed.

Now, in addition to the problems we face from the Kenosha police and sheriff's departments, federal forces are coming to Wisconsin. We are concerned about numerous reports of protesters who have been abducted from the streets by officers in unmarked vehicles and taken to unknown locations, which raise chilling echoes of similar events in Portland. In at least one video, one of the officers is clearly wearing a U.S. Marshal's jacket, which suggests that federal officials may be involved. And many of the loved ones of those snatched from the streets of Kenosha are navigating complex systems trying to find them and get them released.

These federal forces appear to be from some of the same agencies that engaged in the lawless response to protests in Portland Oregon. We are concerned because in Oregon, those militarized federal agents have flouted valid court orders, used sharpshooters to maim people, and deployed military tools and tactics—including sonic weapons, tear gas, and arrests conducted by unmarked officers in unmarked vehicles against Black Lives Matter protesters.

As we are sure you know, the use of militarized tools and tactics against protesters exercising their constitutionally protected rights is an assault on civil rights and civil liberties that violates the First and Fourth Amendments of the Constitution, as well as the Wisconsin Constitution. The people have a right to be free from unreasonable searches and seizures. Being attacked with tear gas or kinetic impact munitions by law enforcement simply for engaging in a protest of systemically racist policing of course violates the First Amendment of the US Constitution, as well as the Wisconsin Constitution. A number of federal courts have found these tactics to be unconstitutional.

These law enforcement actions may also constitute crimes, and ones committed to interfere with the exercise of constitutionally protected civil rights and civil liberties. No officers—not the police, sheriff's deputies, or federal law enforcement—are above the law. They must be held accountable for their actions. You hold power as the Attorney General to help ensure this outcome.

¹ Indeed, this shooting took place in the context of severe racial disparities in law enforcement in Kenosha County. For example, the ACLU's *A Tale of Two Countries* report published earlier this year showed that Black people in Kenosha County are 6.9 times more likely to be arrested for marijuana possession than white people — almost double the national racial disparities in such arrests. See ACLU, Wisconsin data visualizer, <https://graphics.aclu.org/marijuana-arrest-report/WI>.

The people of Wisconsin are entitled to a full and fair investigation of the actions of, and violence committed, by law enforcement at any level against members of our community. Unfortunately, it is clear that at the federal level, high-level Executive officials may be involved in decisions to use unconstitutional and dangerous tactics against protesters, journalists, legal observers, and medics. Similar problems appear to be occurring at the local level in Kenosha. To preserve the trust of the people in the outcome of these proceedings, it is in the public interest that any investigation into these matters be conducted in an impartial, transparent, and independent manner.

That is why the ACLU-WI strongly urges you to investigate, or immediately appoint a special counsel to investigate, and, if warranted, prosecute any crimes or civil rights violations committed by federal, state, or local law enforcement against protesters, journalists, legal observers, and medics in Wisconsin. Wisconsin has invited federal forces into our state. Now the state must promise to hold them and any other law enforcement officials to account for their actions.

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

Christopher Ott
Executive Director
ACLU of Wisconsin