

VIA ELECTRONIC MAIL

July 7, 2020

Richard Doyle
San Jose City Attorney
[REDACTED]
200 E. Santa Clara St., 16th Fl.
San Jose, CA 95113
Ph: (408) 535-1900

Re: No Further Prosecution of Curfew Violations

Dear San Jose City Attorney Doyle:

During constitutionally protected protests reflecting shared outrage about the murder of Black men and women, several dozen individuals were cited for violating the City of San Jose's curfew imposed from May 31 to June 4, 2020.¹ Those curfew violations are subject to punishment under Title 8 of the Municipal Code, 8.08.260, meaning that violators could face fines of up to \$500 or time in jail.²

We write to request that you—in your capacity as the chief law enforcement officer of San Jose—publicly announce that you will drop any charges already filed for these violations; not file any further charges; and clear any and all records regarding those citations. Several other California jurisdictions already have taken the position we urge here. Alameda County's DA O'Malley emailed us on June 23 that the office would not be prosecuting most of the curfew

¹ See Declaration of the Director of Emergency Services of the City of San Jose Imposing a Curfew with Limited Exceptions and Superseding the May 31, 2020 Declaration Imposing a Curfew, <https://www.sanjoseca.gov/home/showdocument?id=59288> (June 2, 2020); Jodi Meacham, "San Jose, Santa Clara impose curfews at start of third night of police protests" (May 31, 2020), <https://www.bizjournals.com/sanjose/news/2020/05/31/san-jose-curfew-protests.html>; Maggie Angst, "San Jose to lift citywide curfew on Thursday morning," *Mercury News* (June 2, 2020), <https://www.mercurynews.com/2020/06/02/san-jose-to-lift-citywide-curfew-on-thursday-morning/>.

² Jennifer Wadsworth, "DA Won't Prosecute Curfew Violators—But San Jose Might," *San Jose Inside* (June 25, 2020), <https://www.sanjoseinside.com/news/santa-clara-county-da-wont-prosecute-curfew-violators-peaceful-protesters/>; San Jose Muni. Code 8.08.260.

violations. The Sacramento City Attorney has done the same,³ as has the Los Angeles City Attorney and the Los Angeles County District Attorney.⁴

San Jose's curfew order was unconstitutional, much like the orders other jurisdictions that have decided not to pursue charges after our intervention, such as Sacramento.⁵ The curfew imposed a sweeping general ban on the public assembly, free expression in all public forums, and movement. The curfew was not narrowly tailored. *McCullen v. Coakley*, 573 U.S. 464, 495 (2014). The curfew also provided insufficient notice. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). And the curfew was vague and ambiguous as to critical terms, rendering the entirety unconstitutional. *Kolender v. Lawson*, 461 U.S. 352, 358 (1983). Finally, fines imposed for violating the Order would have a disproportionate effect on low-income people, and people of color, which will be exacerbated by the economic effects of the COVID-19 pandemic.

San Jose's enforcement of the curfew order also improperly targeted unhoused people and legal observers, and subjected protesters to unnecessary force and exposed to an increased risk of COVID-19.⁶ For example, Vera Sloan was arrested and cited for violating curfew while working as a legal observer on May 31, 2020. That night, at around 9:00 p.m., she was watching a group of officers arrest another person in downtown San Jose when an officer told her to leave the area. She told the officer that she was a legal observer observing arrests. Immediately, the officer yelled a code ("10-15") and numerous officers rushed Ms. Sloan and tackled her to the ground. She was then zip-tied, loaded into the back of a police van, and taken to the Milpitas Mall outside of San Jose with no way to get home. Scott Largent, an unhoused man, was arrested for violating curfew on May 31, 2020. After he informed the officers that he was both unhoused and working as a legal observer, officers again yelled the code and tackled him. Like Ms. Sloan's, his wrists were then zip-tied behind his back and he was driven to the Milpitas Mall, where the police officers dumped him and other arrestees. Mr. Largent emphasized that he was one of numerous legal observers and journalists arrested and then left at the Milpitas Mall. Other arrested protesters emphasized the use of unreasonable force.⁷ For instance, San Jose police officers apprehended in an alley one person

³ See, e.g., "No Charges Filed Against Those who Broke Sacramento Curfew, Attorney Says", KCRA News (June 30, 2020), <https://www.kcra.com/article/no-charges-filed-against-those-who-broke-sacramento-curfew-attorney-says/33012481#>.

⁴ See, e.g., News Release, "June 8, 2020: District Attorney Jackie Lacey Will Not File Charges for Curfew Violations, Failure to Disperse," <http://da.lacounty.gov/media/news/district-attorney-jackie-lacey-will-not-file-charges-curfew-violations-failure-disperse>. Jurisdictions around the country, from Cincinnati and Denver to Miami-Dade County and Manhattan, similarly declared that they will not pursue such charges.

⁵ See, e.g., Letter Demands City of Sacramento Drop Charges Against 72 Protesters for Violating Curfew (June 15, 2020), <https://lccr.com/newsroom/news-press-releases/lawyers-committee-for-civil-rights-of-sf-and-aclu-northern-california-demand-the-city-of-sacramento-drop-charges-against-72-protesters-for-violating-curfew/>

⁶ The following accounts were collected by ACLU of Northern California and Urban Peace Movement.

⁷ Numerous news accounts have emphasized the sheer breadth of police violence against protesters in San Jose, leading to proposed reforms to the city's use of force policies. See, e.g.,

City Attorney Doyle

July 7, 2020

Page 3

who was fleeing the mass arrest of protesters in downtown San Jose. Although laying down on the ground, spread-eagled, the person was aggressively detained. One officer put his body weight on the protester's right wrist, causing a hairline fracture, as others struck the person in the back and drove their knees into the person's spine. The person asked several times for medical treatment, but the officers only laughed.

San Jose's rescission of the unlawful curfew on June 4 was a necessary first step. But those who were issued misdemeanor curfew violations continue to face jail time, fines, or both, an unconscionable burden on and retaliation against their exercise of basic rights. The City must take further action to prevent yet more harm.

San Jose adopted its curfew order in response to protests that represent a growing consensus on the need to end centuries-long police brutality against Black people. The protests are a physical representation of the widespread public outrage after police officer Derek Chauvin murdered George Floyd, a 46-year-old Black man, by pressing his knee into Mr. Floyd's neck, obstructing his breathing for almost nine minutes. Mr. Floyd's cruel and senseless murder was of course not the first, but instead followed thousands of previous police killings of Black people. And of course families who have lost loved ones to police in San Jose have been calling out for justice and an end to police violence for generations. And people continue to die at the hands of police nearly every day, including during the protests. We equally condemn and have long advocated against police brutality, racial profiling, and selective enforcement of laws against Black people that result in a disproportionate impact of the criminal justice system on Black lives.

We request a public statement that San Jose will drop all charges against anyone who purportedly violated the Order, including all fines and bail obligations associated with the alleged violations. Further, all records relevant to these arrests should be cleared.

We would be happy to work on the language of that announcement with you. We respectfully ask that you respond to the requests in this letter by Friday, July 10.

Sincerely,

Annie Decker, Staff Attorney
ACLU of Northern California

Tifanei Ressler-Moyer, Attorney and Thurgood Marshall Civil Rights Fellow
Lawyers' Committee for Civil Rights of the San Francisco Bay Area

Raj Jayadev & Cecilia Chavez
Silicon Valley De-Bug

“San Jose Mayor Proposes Wide-Ranging Police Reform in Light of Excessive Force Complaints” (June 25, 2020), <https://www.msn.com/en-us/news/us/san-jose-mayor-proposes-wide-ranging-police-reform-in-light-of-excessive-force-complaints/ar-BB15WoSw>.

City Attorney Doyle

July 7, 2020

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cc:

Sam Liccardo, Mayor

[REDACTED]

Charles Jones, Vice Mayor and District 1 Council Member

[REDACTED]

Sergio Jimenez, District 2 Council Member

[REDACTED]

Raul Peralez, District 3 Council Member

[REDACTED]

Lan Diep, District 4 Council Member

[REDACTED]

Magdalena Carrasco, District 5 Council Member

[REDACTED]

Devora Davis, District 6 Council Member

[REDACTED]

Maya Esparza, District 7 Council Member

[REDACTED]

Sylvia Arenas, District 8 Council Member

[REDACTED]

Pam Foley, District 9 Council Member

[REDACTED]

Johnny Khamis, District 10 Council Member

[REDACTED]

From: iq4rent sc <[REDACTED]>

Sent: Thursday, July 9, 2020 11:52 AM

To: [REDACTED] <[REDACTED]> The Office of Mayor Sam Liccardo
<[REDACTED]> District1 <[REDACTED]> District2
<[REDACTED]> District3 <[REDACTED]> District4 <[REDACTED]> District5
<[REDACTED]> District 6 <[REDACTED]> District7 <[REDACTED]> District8
<[REDACTED]> District9 <[REDACTED]> District 10 <[REDACTED]> Agendadesk
<[REDACTED]>

Subject: Greetings from someone who was hit, repeatedly gassed, shot twice and arrested

[External Email]

I wholeheartedly support the enclosed letter and urge the City Attorney to drop all curfew charges. I also urge the council to investigate all SJPD claims that the curfew was even necessary. Lastly, I urge the council to work with the BOS to investigate Covid exposure on Sheriff transport vehicles and the processing center at SAP, and the leaving of arrestees at the Great Mall and Eastridge Mall in the middle of the night. This entire process was unnecessarily punitive, targeted POC, media and Legal Observers.

Regards,
Shaunn Cartwright

From: Kenneth Rosales <[REDACTED]>
Sent: Thursday, July 9, 2020 12:59:48 PM
To: CAO Main <[REDACTED]>
Cc: City Clerk <[REDACTED]> Liccardo, Sam <[REDACTED]> Jones, Chappie <[REDACTED]>
<[REDACTED]> Jimenez, Sergio <[REDACTED]> Peralez, Raul <[REDACTED]>
<[REDACTED]> Diep, Lan <[REDACTED]> Carrasco, Magdalena <[REDACTED]>
<[REDACTED]> Davis, Dev <[REDACTED]> Esparza, Maya <[REDACTED]>
<[REDACTED]> Arenas, Sylvia <[REDACTED]> Foley, Pam <[REDACTED]>
<[REDACTED]> Khamis, Johnny <[REDACTED]>
Subject: No Further Prosecution of Curfew Violations

[External Email]

Hi San Jose City Attorney Doyle,

I am a resident of San Jose, District 3 and I'm informing you that I stand in solidarity with the [demands](#) provided to you in the July 7 email by Annie Decker with the ACLU, Raj Jayadev/Cecilia Chavez with SV Debug, et. al. Please drop all charges against anyone who purportedly violated the curfew Order, including all fines and bail obligations associated with the alleged violations. Moreover, all records relevant to these arrests should be cleared.

Best,

Kenneth

From: kathryn hedges <[REDACTED]>

Sent: Thursday, July 9, 2020 8:53:23 PM

To: CAO Main <[REDACTED]>

Cc: The Office of Mayor Sam Liccardo <[REDACTED]> District3

<[REDACTED]> District1 <[REDACTED]> District2 <[REDACTED]> District4

<[REDACTED]> District5 <[REDACTED]> District 6 <[REDACTED]> District7

<[REDACTED]> District8 <[REDACTED]> District9 <[REDACTED]> District 10

<[REDACTED]> City Clerk <[REDACTED]>

Subject: Drop all curfew charges

[External Email]

Dear San Jose City Attorney Doyle:

I am a resident of Downtown San Jose and a member of PACT, PICO California, SOMOS Mayfair, and Bend the Arc. I witnessed much of the police intimidation by City Hall and my friends were victims of police brutality.

I support the attached letter by the ACLU, the Lawyers' Committee for Civil Rights of the San Francisco Bay Area, and Silicon Valley De-Bug. They have all the right citations and I agree with their conclusions.

The County of Santa Clara has already declined to prosecute curfew charges for substantially the same the reasons outlined in the letter. There is no reason why the City of San Jose should continue to pursue prosecution for any reason other than to avoid admitting responsibility for the ill-advised decision to impose the curfew. The curfew did nothing but escalate the justified indignation of the protesters and suppress the free speech of those, like myself, who were afraid of the consequences of staying out after curfew.

Please do the reasonable (and Constitutional) thing and drop all curfew violation charges. These charges are unlikely to be upheld in court and continuing prosecution merely harasses the victims further.

Regards,

Kathryn Hedges

July 10, 2020

Office of the City Attorney
200 E. Santa Clara St.
16th Floor
San Jose, CA 95113

Dear Rick Doyle

A child that is not embraced by the Village will burn it down to feel its warmth" African Proverb

Our nation is at an important crossroads and your action and commitment to justice are more important now than ever before. The events of this past months have been a sobering reminder of the systemic issues that still plague our city and nation.

We have watched our city legislators slow to respond with thoughtful and substantive reforms. Even in the face of such injustice, young people across this city have been at the forefront of a reinvigorated fight. Young people have given new energy and life to the fight for justice and equality in our country.

During constitutionally protected protests reflecting shared outrage about the murder of Black men and women, several dozen individuals were cited for violating the City of San Jose's curfew imposed from May 31 to June 4, 2020. I write to request that you—in your capacity as the chief law enforcement officer of San Jose—publicly announce that you will drop any charges already filed for these violations; not file any further charges; and clear any and all records regarding those citations. Several other California jurisdictions already have taken the position I urge you to take. President John F. Kennedy, "Those who make peaceful revolution impossible will make violent revolution inevitable."

San Jose adopted its curfew order in response to protests that represent a growing consensus on the need to end centuries-long police brutality against Black people. The protests are a physical representation of the widespread public outrage after police officer Derek Chauvin murdered George Floyd, a 46-year-old Black man, by pressing his knee into Mr. Floyd's neck, obstructing his breathing for almost nine minutes. Mr. Floyd's cruel and senseless murder was of course not the first, but instead followed thousands of previous police killings of Black people.

And of course, families who have lost loved ones to police in San Jose have been calling out for justice and an end to police violence for generations. And people continue to die at the hands of police nearly every day, including during the protests. We equally condemn and have long advocated against police brutality, racial profiling, and selective enforcement of laws against Black people that result in a disproportionate impact of the criminal justice system on Black lives.

We request a public statement that San Jose will drop all charges against anyone who purportedly violated the Order, including all fines and bail obligations associated with the alleged violations. Further, all records relevant to these arrests should be cleared.

John F. Kennedy "Those who make peaceful revolution impossible will make violent revolution inevitable."

Peace n Power

Pastor Jethroe Moore II, President

Curfew violations

SB

Stacy Brobst <[REDACTED]>
Thu 7/9/2020 8:21 AM

[External Email]

Good morning,

I urge you not to prosecute curfew violations from during the protests. This is a waste of money and resources. This was just a way for the police to disrupt peaceful protests, which are allowed by the constitution. Please don't let them get away with this nonsense.

Thank you,
Stacy Brobst

Pls don't prosecute curfew violations

SL

Shannon Loucks <[REDACTED]>
Thu 7/9/2020 8:07 AM
To: CAO Main

[External Email]

Thank you for your time.

San Jose adopted a curfew order in response to protest representing a need to end centuries of police brutality. When a police officer held his knee on George Floyd's neck for over 8 minutes people poured into the street to demand change. Enough was enough. San Jose police and city council have admired to acting in haste and without proper notification to the general public. It only makes sense that the charges brought about from this decision be dropped. The potentially fines will be devastating to those who are already foregoing income due to the urgency of the fight for justice.

In gratitude
Shannon

Stop the Prosecution of San Jose Curfew Violations

NN

Nassim Nouri <[REDACTED]>
Thu 7/9/2020 7:15 AM
To: CAO Main

[External Email]

Dear San Jose City Attorney Doyle,
During the constitutionally protected protests over outrage about the murder of Black men and women, several dozen individuals were cited for violating the City of San Jose's curfew imposed from May 31 to June 4, 2020.

I request that you, as the chief law enforcement officer of San Jose, publicly announce that you will drop all charges already filed for these individuals; not file any further charges; and clear all their records regarding these citations.

Many other California jurisdictions have already taken this position, including Alameda County's DA, the Sacramento City Attorney, the Los Angeles City Attorney and the Los Angeles County District Attorney.

San Jose's curfew order imposed an unconstitutional general ban on the public assembly and free expression in all public forums, and movement. The curfew order also targeted unhoused people and legal observers, and subjected protesters to unnecessary force and exposure to an increased risk of COVID-19.

Sincerely,

Nassim Nouri
District 4 resident
Council member, Green Party of Santa Clara County

cc:
Sam Liccardo, Mayor
Charles Jones, Vice Mayor and District 1 Council Member
Sergio Jimenez, District 2 Council Member
Raul Peralez, District 3 Council Member
Lan Diep, District 4 Council Member
Magdalena Carrasco, District 5 Council Member
Devora Davis, District 6 Council Member
Maya Esparza, District 7 Council Member
Sylvia Arenas, District 8 Council Member
Pam Foley, District 9 Council Member
Johnny Khamis, District 10 Council Member

DROP ALL CHARGES FOR CURFEW

MM

M. Sachs Martin <[REDACTED]>
Wed 7/8/2020 11:59 PM

To: CAO Main

[External Email]

This curfew was ridiculous and designed to target black and brown community leaders and youth. ALL charges associated with it must be dropped immediately. I've been a San Jose resident for almost fifty years, taught in its schools, worked in its parks, and I've never seen such a garbage excuse for injustice. Drop the charges now!

Thank you

Miriam

Re: No Further Prosecution of Curfew Violations

MN

Melissa-Ann Nievera-Lozano <[REDACTED]>
Wed 7/8/2020 11:23 PM

To: CAO Main

Cc: The Office of Mayor Sam Liccardo; District1; District2; District3; District4; District5; District 6; District7; District8; District9; District 10

[External Email]

Dear San Jose City Attorney Doyle:

During constitutionally protected protests reflecting shared outrage about the murder of Black men and women, several dozen individuals were cited for violating the City of San Jose's curfew imposed from May 31 to June 4, 2020.¹ Those curfew violations are subject to punishment under Title 8 of the Municipal Code, 8.08.260, meaning that violators could face fines of up to \$500 or time in jail.²

We write to request that you—in your capacity as the chief law enforcement officer of San Jose—publicly announce that you will drop any charges already filed for these violations; not file any further charges; and clear any and all records regarding those citations. Several other California jurisdictions already have taken the position we urge here. Alameda County's DA O'Malley emailed us on June 23 that the office would not be prosecuting most of the curfew

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San Jose's curfew order was unconstitutional, much like the orders other jurisdictions that have decided not to pursue charges after our intervention, such as Sacramento.⁵ The curfew imposed a sweeping general ban on the public assembly, free expression in all public forums, and movement. The curfew was not narrowly tailored. *McCullen v. Coakley*, 573 U.S. 464, 495 (2014). The curfew also provided insufficient notice. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). And the curfew was vague and ambiguous as to critical terms, rendering the entirety unconstitutional. *Kolender v. Lawson*, 461 U.S. 352, 358 (1983). Finally, fines imposed for violating the Order would have a disproportionate effect on low-income people, and people of color, which will be exacerbated by the economic effects of the COVID-19 pandemic.

San Jose's enforcement of the curfew order also improperly targeted unhoused people and legal observers, and subjected protesters to unnecessary force and exposed to an increased risk of COVID-19.⁶ For example, Vera Sloan was arrested and cited for violating curfew while working as a legal observer on May 31, 2020. That night, at around 9:00 p.m., she was watching a group of officers arrest another person in downtown San Jose when an officer told her to leave the area. She told the officer that she was a legal observer observing arrests. Immediately, the officer yelled a code ("10-15") and numerous officers rushed Ms. Sloan and tackled her to the ground. She was then zip-tied, loaded into the back of a police van, and taken to the Milpitas Mall outside of San Jose with no way to get home. Scott Largent, an unhoused man,

was arrested for violating curfew on May 31, 2020. After he informed the officers that he was both unhoused and working as a legal observer, officers again yelled the code and tackled him. Like Ms. Sloan's, his wrists were then zip-tied behind his back and he was driven to the Milpitas Mall, where the police officers dumped him and other arrestees. Mr. Largent emphasized that he was one of numerous legal observers and journalists arrested and then left at the Milpitas Mall. Other arrested protesters emphasized the use of unreasonable force.⁷ For instance, San Jose police officers apprehended in an alley one person

³ See, e.g., “No Charges Filed Against Those who Broke Sacramento Curfew, Attorney Says”, KCRA News (June 30, 2020), <https://www.kcra.com/article/no-charges-filed-against-those-who-broke-sacramento-curfew-attorney-says/33012481#>. ⁴ See, e.g., News Release, “June 8, 2020: District Attorney Jackie Lacey Will Not File Charges for Curfew Violations, Failure to Disperse,” <http://da.lacounty.gov/media/news/district-attorney-jackie-lacey-will-not-file-charges-curfew-violations-failure-disperse>. Jurisdictions around the country, from Cincinnati and Denver to Miami-Dade County and Manhattan, similarly declared that they will not pursue such charges. ⁵ See, e.g., Letter Demands City of Sacramento Drop Charges Against 72 Protesters for Violating Curfew (June 15, 2020), <https://lccr.com/newsroom/news-press-releases/lawyers-committee-for-civil-rights-of-sf-and-aclu-northern-california-demand-the-city-of-sacramento-drop-charges-against-72-protesters-for-violating-curfew/> ⁶ The following accounts were collected by ACLU of Northern California and Urban Peace Movement. ⁷ Numerous news accounts have emphasized the sheer breadth of police violence against protesters in San Jose, leading to proposed reforms to the city's use of force policies. See, e.g., who was fleeing the mass arrest of protesters in downtown San Jose. Although laying down on the ground, spread-eagled, the person was aggressively detained. One officer put his body weight on the protester's right wrist, causing a hairline fracture, as others struck the person in the back and drove their knees into the person's spine. The person asked several times for medical treatment, but the officers only laughed.

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We would be happy to work on the language of that announcement with you. We respectfully ask that you respond to the requests in this letter by Friday, July 10.

Sincerely,

Melissa-Ann Nievera-Lozano, Ph.D. | *she/they/siya*

Resident in District 3, San Jose

Curfew to City Attorney

Y

yasir.Farooqui <[REDACTED]>
Thu 7/9/2020 10:46 AM
To: CAO Main

[External Email]

Dear San Jose City Attorney Doyle:

During constitutionally protected protests reflecting shared outrage about the murder of Black men and women, several dozen individuals were cited for violating the City of San Jose's curfew imposed from May 31 to June 4, 2020.¹ Those curfew violations are subject to punishment under Title 8 of the Municipal Code, 8.08.260, meaning that violators could face fines of up to \$500 or time in jail.²

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Demands to no longer prosecute of curfew violations

Some content in this message has been blocked because the sender isn't in your Safe senders list. [Show blocked content](#)

JW

Julia White <[REDACTED]>
Thu 7/9/2020 10:02 AM

To:

- CAO Main;
- The Office of Mayor Sam Liccardo

[External Email]

Dear San José City Attorney Richard Doyle,

My name is Julia White, and I am a concerned member of the San José community. Alongside prominent organizations, I'm writing to urge you to not prosecute individuals who were criminalized under the city's unconstitutional curfew from May 23 to June 4, 2020. I have read, included below, and wholeheartedly agree with the collective statement from folx at Silicon Valley De-Bug, the ACLU of Northern California, and civil rights lawyers in the Bay Area. As mentioned below, following through with these prosecutions will only serve to further marginalize community members and put them in deep economic, social, and political risk. We will not stand for this injustice.

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During constitutionally protected protests reflecting shared outrage about the murder of Black men and women, several dozen individuals were cited for violating the City of San Jose's curfew imposed from May 31 to June 4, 2020.¹ Those curfew violations are subject to punishment under Title 8 of the Municipal Code, 8.08.260, meaning that violators could face fines of up to \$500 or time in jail.

*We write to request that you—in your capacity as the chief law enforcement officer of San Jose—publicly announce that you will drop any charges already filed for these violations; not file any further charges; and clear any and all records regarding those citations. Several other California jurisdictions already have taken the position we urge here. Alameda County's DA O'Malley stated on June 23 that the office would not be prosecuting most of the curfew. violations. The Sacramento City Attorney has done the same,³ as has the Los Angeles City Attorney and the Los Angeles County District Attorney.⁴ San Jose's curfew order was unconstitutional, much like the orders other jurisdictions that have decided not to pursue charges after our intervention, such as Sacramento.⁵ The curfew imposed a sweeping general ban on the public assembly, free expression in all public forums, and movement. The curfew was not narrowly tailored. *McCullen v. Coakley*, 573 U.S. 464, 495 (2014). The curfew also provided insufficient notice. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). And the curfew was vague and ambiguous as to critical terms, rendering the entirety unconstitutional. *Kolender v. Lawson*, 461 U.S. 352, 358 (1983). Finally, fines imposed for violating the Order would have a disproportionate effect on low-income people, and people of color, which will be exacerbated by the economic effects of the COVID-19 pandemic. San Jose's enforcement of the curfew order also improperly targeted unhoused people and legal observers, and subjected protesters to unnecessary force and exposed to an increased risk of COVID-19.⁶ For*

example, Vera Sloan was arrested and cited for violating curfew while working as a legal observer on May 31, 2020. That night, at around 9:00 p.m., she was watching a group of officers arrest another person in downtown San Jose when an officer told her to leave the area. She told the officer that she was a legal observer observing arrests. Immediately, the officer yelled a code (“10-15”) and numerous officers rushed Ms. Sloan and tackled her to the ground. She was then zip-tied, loaded into the back of a police van, and taken to the Milpitas Mall outside of San Jose with no way to get home. Scott Largent, an unhoused man, was arrested for violating curfew on May 31, 2020. After he informed the officers that he was both unhoused and working as a legal observer, officers again yelled the code and tackled him. Like Ms. Sloan’s, his wrists were then zip-tied behind his back and he was driven to the Milpitas Mall, where the police officers dumped him and other arrestees. Mr. Largent emphasized that he was one of numerous legal observers and journalists arrested and then left at the Milpitas Mall. Other arrested protesters emphasized the use of unreasonable force.⁷ For instance, San Jose police officers apprehended in an alley one person who was fleeing the mass arrest of protesters in downtown San Jose. Although laying down on the ground, spread-eagled, the person was aggressively detained. One officer put his body weight on the protester’s right wrist, causing a hairline fracture, as others struck the person in the back and drove their knees into the person’s spine. The person asked several times for medical treatment, but the officers only laughed. San Jose’s rescission of the unlawful curfew on June 4 was a necessary first step. But those who were issued misdemeanor curfew violations continue to face jail time, fines, or both, an unconscionable burden on and retaliation against their exercise of basic rights. The City must take further action to prevent yet more harm. San Jose adopted its curfew order in response to protests that represent a growing consensus on the need to end centuries-long police brutality against Black people. The protests are a physical representation of the widespread public outrage after police officer Derek Chauvin murdered George Floyd, a 46-year-old Black man, by pressing his knee into Mr. Floyd’s neck, obstructing his breathing for almost nine minutes. Mr. Floyd’s cruel and senseless murder was of course not the first, but instead followed thousands of previous police killings of Black people. And of course families who have lost loved ones to police in San Jose have been calling out for justice and an end to police violence for generations. And people continue to die at the hands of police nearly every day, including during the protests. We equally condemn and have long advocated against police brutality, racial profiling, and selective enforcement of laws against Black people that result in a disproportionate impact of the criminal justice system on Black lives. We request a public statement that San Jose will drop all charges against anyone who purportedly violated the Order, including all fines and bail obligations associated with the alleged violations. Further, all records relevant to these arrests should be cleared. We would be happy to work on the language of that announcement with you. We respectfully ask that you respond to the requests in this letter by Friday, July 10.

¹ See Declaration of the Director of Emergency Services of the City of San Jose Imposing a Curfew with Limited Exceptions and Superseding the May 31, 2020 Declaration Imposing a Curfew, <https://www.sanjoseca.gov/home/showdocument?id=59288> (June 2, 2020); Jodi Meacham, “San Jose, Santa Clara impose curfews at start of third night of police protests” (May 31, 2020), <https://www.bizjournals.com/sanjose/news/2020/05/31/san-jose-curfew-protests.html>; Maggie Angst, “San Jose to lift citywide curfew on Thursday morning,” Mercury News (June 2, 2020), <https://www.mercurynews.com/2020/06/02/san-jose-to-lift-citywide-curfew-on-thursday-morning/>.

² Jennifer Wadsworth, “DA Won’t Prosecute Curfew Violators—But San Jose Might,” San Jose Inside (June 25, 2020), <https://www.sanjoseinside.com/news/santa-clara-county-da-wont-prosecute-curfew-violators-peaceful-protesters/>; San Jose Muni. Code 8.08.260.

³ See, e.g., “No Charges Filed Against Those who Broke Sacramento Curfew, Attorney Says”, KCRA News (June 30, 2020), <https://www.kcra.com/article/no-charges-filed-against-those-who-broke-sacramento-curfew-attorney-says/33012481#>.

⁴ See, e.g., News Release, “June 8, 2020: District Attorney Jackie Lacey Will Not File Charges for Curfew Violations, Failure to Disperse,” <http://da.lacounty.gov/media/news/district-attorney-jackie-lacey-will-not-file-charges-curfew-violations-failure-disperse>. Jurisdictions around the country, from Cincinnati and Denver to Miami-Dade County and Manhattan, similarly declared that they will not pursue such charges.

5 See, e.g., *Letter Demands City of Sacramento Drop Charges Against 72 Protesters for Violating Curfew* (June 15, 2020), <https://lccr.com/newsroom/news-press-releases/lawyers-committee-for-civil-rights-of-sf-and-aclu-northern-california-demand-the-city-of-sacramento-drop-charges-against-72-protesters-for-violating-curfew/>

6 The following accounts were collected by ACLU of Northern California and Urban Peace Movement.

7 Numerous news accounts have emphasized the sheer breadth of police violence against protesters in San Jose, leading to proposed reforms to the city's use of force policies. See, e.g.,

Sincerely,
Julia White

--

Julia White (she/her/hers)

Do not prosecute curfew violations

M

Thu 7/9/2020 9:53 AM

To: CAO Main

[External Email]

Hello,

I am writing to implore you not to prosecute curfew violation arrests made during the protests against the murder of George Floyd. Protests are constitutionally protected and these curfew violation arrests were made disproportionately against Black, Brown, and unhoused individuals, as well as legal observers. Please drop all of these charges and do not enforce any citations. Please make a public statement that you are doing so.

Thank you,

Melanie McManus

Stop the Prosecution of San Jose Curfew Violations

CP

Christine Pepin <[REDACTED]>

Thu 7/9/2020 11:18 AM

To: CAO Main

Cc: The Office of Mayor Sam Liccardo; District1; District3; District4; District5; District 6; District7; District8; District9; District 10

[External Email]

Dear San Jose City Attorney Doyle,

During the constitutionally protected protests over outrage about the murder of Black men and women, several dozen individuals were cited for violating the City of San Jose's curfew imposed from May 31 to June 4, 2020.

I request that you, as the chief law enforcement officer of San Jose, publicly announce that you will drop all charges already filed for these individuals; not file any further charges; and clear all their records regarding these citations.

Many other California jurisdictions have already taken this position, including Alameda County's DA, the Sacramento City Attorney, the Los Angeles City Attorney and the Los Angeles County District Attorney.

San Jose's curfew order imposed an unconstitutional general ban on the public assembly and free expression in all public forums, and movement. The curfew order also targeted unhoused people and legal observers, and subjected protesters to unnecessary force and exposure to an increased risk of COVID-19.

Sincerely,

Christine Pepin

No Further Prosecution of Curfew Violations

HN

Huong Nguyen <[REDACTED]>

Thu 7/9/2020 12:16 PM

To: CAO Main

Cc: District1; District2; District3; District4; District5; District 6; District7; District8; District9; District 10

[External Email]

Dear San Jose City Attorney Doyle:

During constitutionally protected protests reflecting shared outrage about the murder of Black men and women, several dozen individuals were cited for violating the City of San Jose's curfew imposed from May 31 to June 4, 2020.¹ Those curfew violations are subject to punishment under Title 8 of the Municipal Code, 8.08.260, meaning that violators could face fines of up to \$500 or time in jail.²

We write to request that you—in your capacity as the chief law enforcement officer of San Jose—publicly announce that you will drop any charges already filed for these violations; not file any further charges; and clear any and all records regarding those citations. Several other California jurisdictions already have taken the position we urge here. Alameda County's DA O'Malley emailed us on June 23 that the office would not be prosecuting most of the curfew

¹ See Declaration of the Director of Emergency Services of the City of San Jose Imposing a Curfew with Limited Exceptions and Superseding the May 31, 2020 Declaration Imposing a Curfew, <https://www.sanjoseca.gov/home/showdocument?id=59288> (June 2, 2020); Jodi Meacham, "San Jose, Santa Clara impose curfews at start of third night of police protests" (May 31, 2020), <https://www.bizjournals.com/sanjose/news/2020/05/31/san-jose-curfew-protests.html>; Maggie Angst, "San Jose to lift citywide curfew on Thursday morning," Mercury News (June 2, 2020), <https://www.mercurynews.com/2020/06/02/san-jose-to-lift-citywide-curfew-on-thursday-morning/>.² Jennifer Wadsworth, "DA Won't Prosecute Curfew Violators—But San Jose Might," San Jose Inside (June 25, 2020), <https://www.sanjoseinside.com/news/santa-clara-county-da-wont-prosecute-curfew-violators-peaceful-protesters/>; San Jose Muni. Code 8.08.260.

City Attorney Doyle July 7, 2020 Page 2

violations. The Sacramento City Attorney has done the same,³ as has the Los Angeles City Attorney and the Los Angeles County District Attorney.⁴

San Jose's curfew order was unconstitutional, much like the orders other jurisdictions that have decided not to pursue charges after our intervention, such as Sacramento.⁵

The curfew imposed a sweeping general ban on the public assembly, free expression in all public forums, and movement. The curfew was not narrowly tailored. *McCullen v. Coakley*, 573 U.S. 464, 495 (2014). The curfew also provided insufficient notice. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). And the curfew was vague and ambiguous as to critical terms, rendering the entirety unconstitutional. *Kolender v. Lawson*, 461 U.S. 352, 358 (1983). Finally, fines imposed for violating the Order would have a disproportionate effect on low-income people, and people of color, which will be exacerbated by the economic effects of the COVID-19 pandemic.

San Jose's enforcement of the curfew order also improperly targeted unhoused people and legal observers, and subjected protesters to unnecessary force and exposed to an increased risk of COVID-19.⁶ For example, Vera Sloan was arrested and cited for violating curfew while working as a legal observer on May 31, 2020. That night, at around 9:00 p.m., she was watching a group of officers arrest another person in downtown San Jose when an officer told her to leave the area. She told the officer that she was a legal observer observing arrests. Immediately, the officer yelled a code ("10-15") and numerous officers rushed Ms. Sloan and tackled

her to the ground. She was then zip-tied, loaded into the back of a police van, and taken to the Milpitas Mall outside of San Jose with no way to get home.

Scott Largent, an unhoused man, was arrested for violating curfew on May 31, 2020. After he informed the officers that he was both unhoused and working as a legal observer, officers again yelled the code and tackled him. Like Ms. Sloan's, his wrists were then zip-tied behind his back and he was driven to the Milpitas Mall, where the police officers dumped him and other arrestees. Mr. Largent emphasized that he was one of numerous legal observers and journalists arrested and then left at the Milpitas Mall. Other arrested protesters emphasized the use of unreasonable force.⁷

For instance, San Jose police officers apprehended in an alley one person

³ See, e.g., "No Charges Filed Against Those who Broke Sacramento Curfew, Attorney Says", KCRA News (June 30, 2020), <https://www.kcra.com/article/no-charges-filed-against-those-who-broke-sacramento-curfew-attorney-says/33012481#>. ⁴ See, e.g., News Release, "June 8, 2020: District Attorney Jackie Lacey Will Not File Charges for Curfew Violations, Failure to Disperse," <http://da.lacounty.gov/media/news/district-attorney-jackie-lacey-will-not-file-charges-curfew-violations-failure-disperse>. Jurisdictions around the country, from Cincinnati and Denver to Miami-Dade County and Manhattan, similarly declared that they will not pursue such charges. ⁵ See, e.g., Letter Demands City of Sacramento Drop Charges Against 72 Protesters for Violating Curfew (June 15, 2020), <https://lccr.com/newsroom/news-press-releases/lawyers-committee-for-civil-rights-of-sf-and-aclu-northern-california-demand-the-city-of-sacramento-drop-charges-against-72-protesters-for-violating-curfew/> ⁶

The following accounts were collected by ACLU of Northern California and Urban Peace Movement. ⁷ Numerous news accounts have emphasized the sheer breadth of police violence against protesters in San Jose, leading to proposed reforms to the city's use of force policies. See, e.g. who was fleeing the mass arrest of protesters in downtown San Jose. Although laying down on the ground, spread-eagled, the person was aggressively detained. One officer put his body weight on the protester's right wrist, causing a hairline fracture, as others struck the person in the back and drove their knees into the person's spine. The person asked several times for medical treatment, but the officers only laughed.

San Jose's rescission of the unlawful curfew on June 4 was a necessary first step. But those who were issued misdemeanor curfew violations continue to face jail time, fines, or both, an unconscionable burden on and retaliation against their exercise of basic rights. The City must take further action to prevent yet more harm. San Jose adopted its curfew order in response to protests that represent a growing consensus on the need to end centuries-long police brutality against Black people. The protests are a physical representation of the widespread public outrage after police officer Derek Chauvin murdered George Floyd, a 46-year-old Black man, by pressing his knee into Mr. Floyd's neck, obstructing his breathing for almost nine minutes. Mr. Floyd's cruel and senseless murder was of course not the first, but instead followed thousands of previous police killings of Black people. And of course families who have lost loved ones to police in San Jose have been calling out for justice and an end to police violence for generations. And people continue to die at the hands of police nearly every day, including during the protests. We equally condemn and have long advocated against police brutality, racial profiling, and selective enforcement of laws against Black people that result in a disproportionate impact of the criminal justice system on Black lives.

We request a public statement that San Jose will drop all charges against anyone who purportedly violated the Order, including all fines and bail obligations associated with the alleged violations. Further, all records relevant to these arrests should be cleared.

We would be happy to work on the language of that announcement with you. We respectfully ask that you respond to the requests in this letter by Friday, July 10.

--

Thank you,

Huong Nguyen

Curfew

RO

Rita O'Connell <[REDACTED]>
Fri 7/10/2020 9:22 AM
To: CAO Main

[External Email]

From a San Jose resident of 36 years: please do not prosecute curfew violations.

Rita O'CONNELL

No curfew violation charges

ME

Mishi Ellingson <[REDACTED]>
Fri 7/10/2020 10:48 AM
To: CAO Main

[External Email]

Dear Richard Doyle,

Please do not charge any fines or fees or punish people in anyway for curfew violations. District Attorney Rosen has already committed to not prosecuting curfew violations.

Our Constitution protects our first amendment right to protest the government. Although it might feel uncomfortable at times, it is your job to protect our constitutional rights. Without them we have nothing. We might as well be a banana republic.

Protect the citizens of San Jose. Protect our constitutional rights. Let people have a voice. Police violence is destroying our community. We must be able to speak out against injustice and violence.

Thank you, sir

Mishi Ellingson

Drop charges for curfew violators

KS

Karen Schuler <[REDACTED]>
Fri 7/10/2020 3:01 PM
To: CAO Main

[External Email]

Dear Mr. Doyle:

I join the ACLU of Northern California, Silicon Valley De-Bug, The Lawyers Committee on Civil Rights, and many others in requesting that you—in your capacity as the chief law enforcement officer of San Jose—publicly announce that you will drop any charges already filed for curfew violations; not file any further charges; and clear any and all records regarding those citations. Several other California jurisdictions already have taken this position.

I know people who were peacefully protesting and attempting to comply with officers. The unconstitutional curfew and the police response to the protests are a stain on the image of San Jose in the eyes of the world. Please take steps to help erase that stain by dropping charges and expunging records.

Thank you,

Karen Schuler
San Jose, CA

Do not prosecute curfew violations

FG

Felicia Gershberg <[REDACTED]>

Thu 7/9/2020 3:43 PM

To: CAO Main

Cc: The Office of Mayor Sam Liccardo; District1; District2; District3; District4; District5; District 6; District7; District8; District9; District 10

[External Email]

City Attorney Doyle:

I join the ACLU of Northern California, Silicon Valley De-Bug, The Lawyers Committee on Civil Rights, and many others in requesting that you—in your capacity as the chief law enforcement officer of San Jose—publicly announce that you will drop any charges already filed for curfew violations; not file any further charges; and clear any and all records regarding those citations. Several other California jurisdictions already have taken this position.

I personally know several people who were arrested, including Legal Observers, journalists, and people who were peacefully protesting and attempting to comply with officers. The unconstitutional curfew and the police response to the protests are a stain on the image of San Jose in the eyes of the world. Please take steps to help erase that stain by dropping charges and expunging records.

Thank you,

Felicia Gershberg, PhD

Do not prosecute curfew violations

MA

Miriam Avery <[REDACTED]>
Thu 7/9/2020 5:00 PM
To: CAO Main

[External Email]

Dear San Jose City Attorney Doyle,

I'm writing in support of the letter you received from the ACLU, Lawyers' Committee on Civil Rights, and Silicon Valley Debug urging you not to prosecute curfew violations during the Black Live Matter protests in San Jose last month and moving forward.

The behavior of law enforcement is unacceptable, and you need to act to mitigate the life and health-damaging impacts and set us on a path of healing.

Sincerely,

Miriam Avery

Stop the Prosecution of San Jose Curfew Violations

D

Thu 7/9/2020 5:30 PM

To: CAO Main

Cc: The Office of Mayor Sam Liccardo; District1; District3; District4; District5; District 6; District7; District8;District9; District 10

[External Email]

Dear San Jose City Attorney Doyle,

During the constitutionally protected protests over outrage about the murder of Black men and women, several dozen individuals were cited for violating the City of San Jose's curfew imposed from May 31 to June 4, 2020.

I request that you, as the chief law enforcement officer of San Jose, publicly announce that you will drop all charges already filed for these individuals; not file any further charges; and clear all their records regarding these citations.

Many other California jurisdictions have already taken this position, including Alameda County's DA, the Sacramento City Attorney, the Los Angeles City Attorney and the Los Angeles County District Attorney.

San Jose's curfew order imposed an unconstitutional general ban on the public assembly and free expression in all public forums, and movement. The curfew order also targeted un-housed people and legal observers, and subjected protesters to unnecessary force and exposure to an increased risk of COVID-19.

Sincerely,

Diane Harrison

No further prosecution of curfew violation

LL

Lina Larionova <[REDACTED]>
Thu 7/9/2020 9:08 PM
To: CAO Main

[External Email]

City Attorney Doyle:

I join the ACLU of Northern California, Silicon Valley De-Bug, The Lawyers Committee on Civil Rights, and many others in requesting that you — in your capacity as the chief law enforcement officer of San Jose — publicly announce that you will drop any charges already filed for curfew violations; not file any further charges; and clear any and all records regarding those citations. Several other California jurisdictions already have taken this position.

Legal Observers, journalists, and people who were peacefully protesting and attempting to comply with officers were arrested. The unconstitutional curfew and the police response to the protests are a stain on the image of San Jose in the eyes of the world. Please take steps to help erase that stain by dropping charges and expunging records.

Thank you,
Lina Larionova
Resident of San Jose.

Ask: Do not prosecute curfew violations

NL

Nicole Lynn <[REDACTED]>
Thu 7/9/2020 9:17 PM
To: CAO Main

[External Email]

City Attorney Doyle,

I urge you not to prosecute curfew violations that occurred during the constitutionally protected protests over the last couple of months. I stand with the letter sent by the ACLU, Lawyers' Committee on Civil Rights, and Silicon Valley Debug around these matters.

Thank you,
Nicole Lynn