



January 13, 2021

***Via Electronic Mail***

Attorney General Daniel Cameron  
Kentucky Capital, Office of The Attorney General  
700 Capital Avenue, Suite 118  
Frankfort, Kentucky 40601  
KYOAGOR@ky.gov

**Re: Formal Request in Light of Recent Termination of Louisville Metro Police Department Officers to Appoint a Special Prosecutor and Empanel a New Grand Jury in the Fatal Shooting of Breonna Taylor**

Dear Attorney General Cameron:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (LDF),<sup>1</sup> we write to urge you to appoint a special prosecutor and empanel a new grand jury to investigate, in an unbiased and fair manner, whether the Louisville Metro Police Department (LMPD) officers involved in the fatal shooting of Breonna Taylor should be criminally charged. Recently, Kentucky's Office of the Prosecutors Advisory Council denied the request of Ms. Taylor's mother, Tamika Palmer, to empanel a new grand jury.<sup>2</sup> On January 6, 2021, LMPD terminated Detectives Joshua Jaynes and Myles Cosgrove.<sup>3</sup> The LMPD concluded that Detective Cosgrove used "excessive force" for his fatal shooting of Breonna Taylor, stating he "did not describe target isolation or target identification and instead described flashes that [he] did not properly evaluate

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<sup>1</sup> LDF is the nation's first and premier civil rights legal organization devoted to racial justice. Founded in 1940 by Thurgood Marshall, LDF's mission is to achieve racial justice, equality, and an inclusive society and to fulfill the promise of full and equal citizenship for Black people and other people of color guaranteed by the 14th Amendment to the United States Constitution. Since its inception, LDF has worked to address police violence and accountability. This summer, LDF filed suit against the LMPD for repeated use of military-type force and intimidation in response to peaceful protestors demonstrating against police violence. LDF's lawsuit was brought in conjunction with the Kentucky American Civil Liberties Union and law firm Emery Celli Brinckerhoff Abady Ward & Maazel LLP. *See Scott, et al. v. Louisville, et al.*, No. 20-mc-99999 (W.D. Ky Jul. 30, 2020).

<sup>2</sup> Dylan Lovan, *Council won't appoint new prosecutor in Breonna Taylor case* (Dec. 4, 2020) Associated Press, <https://www.pbs.org/newshour/nation/council-wont-appoint-new-prosecutor-in-breonna-taylor-case>

<sup>3</sup> David K. Li, *2 Louisville police officers fired over roles in fatal shooting of Breonna Taylor* (Jan. 6, 2021), NBC News, [https://www.nbcnews.com/news/us-news/2-louisville-police-officers-fired-over-roles-fatal-shooting-breonna-n1252751?cid=sm\\_npd\\_nn\\_tw\\_ma](https://www.nbcnews.com/news/us-news/2-louisville-police-officers-fired-over-roles-fatal-shooting-breonna-n1252751?cid=sm_npd_nn_tw_ma); see also Nicholas Bogel-Burroughs, *Louisville Officer Who Shot Breonna Taylor Will Be Fired* (December 29, 2020), NYTimes, <https://www.nytimes.com/2020/12/29/us/louisville-officer-fired-jaynes-breonna-taylor.html>.

as a threat.”<sup>4</sup> Had he “evaluated the threat accurately, [he] would have likely stopped firing once the gunfire had stopped.”<sup>5</sup>

In light of the LMPD’s termination of Detective Cosgrove for his use of excessive force during his fatal shooting of Breonna Taylor, and based on our thorough review of the grand jury recordings summarized in a report we released in November<sup>6</sup>, we respectfully request that you utilize your independent authority to appoint a special prosecutor to impartially present all relevant evidence supporting potential charges against officers involved in Ms. Taylor’s death to a new grand jury.

The Louisville community and the nation were understandably dismayed and outraged by your September 23, 2020 announcement stating that the grand jury declined to indict any officers on charges relating to Ms. Taylor’s death and instead indicted one officer for shooting into a neighboring apartment.<sup>7</sup> Almost immediately, a grand juror involved in the proceeding filed a motion requesting the release of grand jury transcripts to shine light on the limited charges the jury was provided to consider.<sup>8</sup> After Circuit Court Judge Ann Bailey Smith ordered the release of the audio recordings of the grand jury proceedings,<sup>9</sup> LDF assembled a team of lawyers to analyze the recordings and additional evidence released by LMPD from its Public Integrity Unit’s investigative file.<sup>10</sup> Our review concluded that the prosecution team’s presentation of evidence to grand jurors was biased and served to protect the involved officers from potentially applicable criminal charges.<sup>11</sup>

This bias was revealed in a number of ways. Specifically, the prosecution team:

- Relied heavily on one witness who supported the LMPD officers’ version of events, despite contrary statements from multiple witnesses;<sup>12</sup>
- Failed to present body camera video or audio evidence and failed to explain the lack of such evidence;<sup>13</sup>

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<sup>4</sup> Natalia Martinez, *Cosgrove’s termination letter cites ‘excessive force’* (Dec. 30, 2020), Wave3 News, <https://www.wave3.com/2020/12/30/cosgroves-termination-letter-cites-excessive-force/>

<sup>5</sup> *Id.*

<sup>6</sup> NAACP Legal Defense & Educational Fund, Inc., *Justice Denied: A Call for a New Grand Jury Investigation into the Killing of Breonna Taylor* (Nov. 2020), [https://www.naacpldf.org/wp-content/uploads/LDF\\_10272020\\_BreonnaTaylor-11.pdf](https://www.naacpldf.org/wp-content/uploads/LDF_10272020_BreonnaTaylor-11.pdf) (hereinafter, LDF Report).

<sup>7</sup> Press Conference: Breonna Taylor Investigation, Kentucky Attorney General Daniel Cameron (Sept. 23, 2020), [https://www.facebook.com/watch/live/?v=369671464066927&ref=watch\\_permalink](https://www.facebook.com/watch/live/?v=369671464066927&ref=watch_permalink).

<sup>8</sup> Pl.’s Mot. for Release of Grand Jury Transcripts/Recordings/Reports, *Anonymous Grand Juror #1 v. Commonwealth of Kentucky*, 20-CI-5721 (Jefferson Circuit Court, filed Sept. 28, 2020) (available at: <https://interactive.whas11.com/pdfs/scannedmotionjrelease.pdf>); *see* .

<sup>9</sup> *See* Bill ChappelL, *Breonna Taylor Grand Jury Recording Will Be Released, Kentucky Attorney General Says* (September 29, 2020), NPR, <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/09/29/918119647/breonna-taylor-grand-jury-recording-will-be-released-kentucky-attorney-general-s>.

<sup>10</sup> Louisville Metro Police Department, Public Integrity Unit files of Breonna Taylor Investigation, <https://louisville-police.org/751/Breonna-Taylor-Investigation>.

<sup>11</sup> *See* LDF Report *supra* n.5 at 5-15.

<sup>12</sup> *Id.* at 5-7.

<sup>13</sup> *Id.* at 7-8.

- Presented prejudicial and irrelevant questioning of Mr. Walker (Ms. Taylor’s boyfriend who was in her apartment at the time of her death) to the grand jury;<sup>14</sup>
- Misled the grand jury regarding the validity of the search warrant;<sup>15</sup>
- Failed to present evidence showing LMPD officers violated department protocol;<sup>16</sup>
- Failed to adequately respond to grand jurors’ inquiries such as why officers’ body cameras were not activated and whether officers had modified the triggers on their weapons;<sup>17</sup>
- Usurped the grand jury’s authority to consider homicide charges against former Detective Hankison, Sergeant Mattingly, and Detective Cosgrove.<sup>18</sup>

Grand jurors have made clear that they were not provided an opportunity to consider any charges beyond the three charges for wanton endangerment against former Detective Brett Hankison:

*The grand jury did not have homicide offenses explained to them. The grand jury never heard anything about those laws. Self-defense or justification was never explained either. Questions were asked [by jurors] about additional charges and the grand jury was told there would be none because the prosecutors didn't feel they could make them stick. The grand jury didn't agree that certain actions were justified, nor did it decide the indictment should be the only charges in the Breanna Taylor case. The grand jury was never given the opportunity to deliberate on those charges and deliberated only on what was presented to them.*<sup>19</sup>

*The grand jury was only allowed to consider the three wanton endangerment charges against detective Hankison. No opportunity to consider anything else was permitted.*<sup>20</sup>

One grand juror has explicitly stated, “there’s quite a bit more that could have been done or should have been presented for us to deliberate on.”<sup>21</sup>

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<sup>14</sup> *Id.* at 8.

<sup>15</sup> *Id.* at 8-9.

<sup>16</sup> *Id.* at 9.

<sup>17</sup> *Id.* at 9-10.

<sup>18</sup> *Id.* at 10-14.

<sup>19</sup> Statement of Grand Juror No. 1, Oct. 20, 2020 (available at: <https://twitter.com/gabegutierrez/status/1318628064339910658/photo/1>); see Elizabeth Joseph, *Breonna Taylor grand jurors say there was an 'uproar' when they realized officers wouldn't be charged with her death*, CNN (October 30, 2020), <https://www.cnn.com/2020/10/29/us/breonna-taylor-grand-jurors/index.html>.

<sup>20</sup> Statement of Grand Juror No. 2, Oct. 22, 2020 (available at: <https://twitter.com/dctello/status/1319376068147630081/photo/1>).

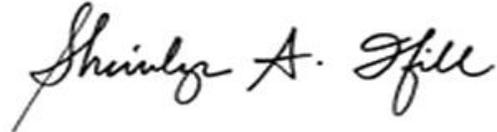
<sup>21</sup> Elizabeth Joseph, *Breonna Taylor grand jurors say there was an 'uproar' when they realized officers wouldn't be charged with her death*, CNN (October 30, 2020), <https://www.cnn.com/2020/10/29/us/breonna-taylor-grand-jurors/index.html>.

Additionally, the prosecution team failed to follow several key legal standards during their presentation of evidence to the grand jury. The grand jury's role is to "investigate allegations of criminal conduct and determine if there is probable cause to believe that a crime has been committed." *Fletcher v. Graham*, 192 S.W.3d 350, 363 (Ky. 2006). Under the Kentucky Rules of Criminal Procedure, the grand jury is "charge[d] . . . to inquire into every offense for which any person has been held to answer and for which an indictment or information has *not* been filed, or other offenses which come to their attention or of which any of them has knowledge." Ky. RCr 5.02 (emphasis added). A prosecutor must "respect the independence of the grand jury and should not preempt a function of the grand jury, mislead the grand jury, or abuse the processes of the grand jury." See American Bar Ass'n, Criminal Justice Standards: Prosecution Function 3-4.5. "While the prosecutor is authorized to act as a legal advisor to the grand jury, the prosecutor should appropriately explain the law and may, if permitted by law, express an opinion on the legal significance of the evidence, but should give due deference to the grand jury as an independent legal body." *Id.*; see also *Young v. United States ex rel. Vuitton et. Fils A*, 481 U.S. 787, 803 (1987) (As "the representative . . . of a sovereignty," all prosecutors must act with "impartiality" to ensure that "justice shall be done."). Because prosecutors substituted their judgment for the grand jury's and did not allow grand jurors to consider any charges beyond those they presented and presented evidence to the grand jury in a biased manner, it is imperative to appoint a new special prosecutor to present evidence to a new grand jury in an impartial manner and to allow a new grand jury to consider any charges they deem appropriate.

Now that the LMPD has terminated two additional officers and concluded that Detective Cosgrove used excessive force in his fatal shooting of Breonna Taylor, it is crucial that a new grand jury be empaneled to consider all relevant evidence and potential criminal charges which your office's prosecution team denied to the first grand jury. We strongly urge you to appoint an independent special prosecutor to convene a new grand jury and present evidence in an impartial manner and allow grand jurors to consider all applicable criminal charges against LMPD officers responsible for Breonna Taylor's death. The failure to do so will continue to demonstrate to the public that the criminal legal process in Kentucky does not recognize the sanctity and dignity of Breonna Taylor's life and will protect law enforcement officers, even those who abuse their power, at all costs.

We are available to discuss this request and our report with you further and look forward to your response. If you have any questions, please do not hesitate to contact Puneet Cheema, Monique Dixon or me at 202-682-1300.

Sincerely,

A handwritten signature in black ink that reads "Sherrilyn A. Ifill". The signature is written in a cursive, flowing style.

Sherrilyn Ifill  
President and Director-Counsel

cc: Lonita Baker, Esq., Attorney, Sam Aguiar Injury Lawyers  
Attachment: *Justice Denied: A Call for a New Grand Jury Investigation into the Killing of Breonna Taylor*