



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Texas

June 17, 2020

Art Acevedo
Chief of Police, City of Houston
public.affairs@houstonpolice.org

Re: Public Commitment to End Mass Arrests and Police Violence against Peaceful Protesters this Juneteenth

Dear Police Chief Acevedo,

We write to ask for your commitment to end police violence against and mass arrests of peaceful protesters this Juneteenth. On this important day, tens of thousands of people intend to gather in Texas communities to protest police brutality, express their anger and frustration at centuries of systemic racism and oppression against Black Americans, and demand change.

Before this pivotal holiday on June 19, we ask that you order all law enforcement officers in your jurisdiction to stop using force against protesters (including projectile weapons and chemical irritants) and to end any practices of “kettling”¹ and mass arrests of people peacefully exercising their First Amendment rights.

We previously sent you a letter on June 3 urging your adherence to ten key principles to protect your constituents’ safety and constitutional rights, including de-escalating conflicts, not using weapons aimed at crowds, and modeling good pandemic hygiene practices. As demonstrated below, multiple departments in our state did not uphold these principles. It is vital that you make a commitment to protect the residents you serve and to ensure that those who protest police brutality do not fall victim to further violence themselves. We ask that you make this public pledge before Juneteenth and that you ensure that law enforcement officers in your community follow these basic commands.

We will not stand idly by in the face of your silence or inaction.

It Is Critical You Act Now

For Black people in Texas and across the country, Juneteenth is among the most meaningful days to commemorate. On June 19, 1865, more than two and a half years after the

¹ Kettling is a military tactic in which people are surrounded on all sides and cut off from being able to exit an area. Deploying this tactic on protesters is incredibly dangerous since it forces people into a closely confined area, closes off exits, and exposes people to COVID-19. This tactic also typically leads to mass arrests, an escalation in violence, and bystanders and journalists being trapped in the “kettle,” sometimes for hours on end.

Emancipation Proclamation was signed, news of the end of centuries of slavery finally made its way to Galveston, the largest city in Texas at the time.

For some, Juneteenth represents the anniversary of emancipation and is a cause for celebration. Yet for many others, Juneteenth also shows how the promise of freedom and justice has always been a dream deferred for Black Americans. The equality enshrined into law by the Thirteenth, Fourteenth, and Fifteenth Amendments to the U.S. Constitution did not displace pervasive anti-Blackness embedded in our society. In the decades following emancipation, brief glimmers of progress were replaced by the establishment of Jim Crow, violent lynching, and mass incarceration of Black people. State-sanctioned violence against Black Americans is centuries-old, and institutions like police, jails, and prisons have always been at the forefront of defending the entrenchment of white supremacy.

Police violence against protesters who seek racial justice also has a long and bloody past. From to the civil rights protests of the 1960's to the protests for Rodney King to the present-day marches for Black Lives, police officers have violently used weapons of war against their own citizens who call for change. In recent weeks, we have seen militarized police violence escalate against peaceful protesters as millions of people in communities large and small flock to the streets to demand racial justice following police killings of George Floyd, Breonna Taylor, Tony McDade, Michael Ramos, and many others.

Police Response to Peaceful Protests in Texas

Since protests began in the wake of George Floyd's death, the ACLU of Texas has documented several ways police violated the First and Fourth Amendments and ignored public safety: by kettling, herding, and arresting peaceful protesters en masse, using excessive force against peaceful protesters, and forcibly exposing protesters to risk of exposure to COVID-19.

Mass Arrests, Kettling, and Forced Exposure to COVID-19

The Constitution prohibits police officers from seizing or detaining someone without reasonable suspicion and an individualized assessment that a person may be engaging in criminal activity.² Likewise, police officers cannot arrest someone unless there is probable cause that a particular person has committed a crime.³ In recent weeks, however, government entities across the state have violated these constitutional principles by kettling and arresting large groups of peaceful protesters without any individualized basis for arrest:

- The Dallas Police Department detained and arrested hundreds of people who were not suspected of committing any crime. On the evening of June 1, for example, police detained 674 peaceful protesters on the Margaret Hunt Hill Bridge. Dallas Police kettled peaceful protesters onto the bridge by ordering them to continue moving along the street feeding onto the bridge. Since the side streets preceding the bridge were closed by Dallas Police, protesters were left no other choice but to walk onto the bridge. But halfway across it, police deployed smoke bombs, pepper spray, and possibly tear gas, as well as

² *City of Indianapolis v. Edmond*, 531 U.S. 32, 37 (2000).

³ *Maryland v. Pringle*, 540 U.S. 366, 371 (2003); *Club Retro, L.L.C. v. Hilton*, 568 F.3d 181, 191 (5th Cir. 2009).

some projectile weapons. When people tried to flee the bridge, they were trapped by police military vehicles on the other side of the bridge. Now, stuck with no exit route, “non-lethal” weapons rained down on the protesters. Hundreds of people were then arrested with zip ties, crowded close together without regard for social distancing, and held without food, water, or bathroom access for several hours. And even though they had nowhere else to go, police threatened protesters with charges of “obstructing a highway.”

- Similarly, the Houston Police Department arrested over 800 people during protests on May 29 and June 2.⁴ While the police department touted Houston’s record-breaking protests as “largely peaceful” during the day, police officers nonetheless used kettling tactics to entrap and arrest mass groups of peaceful protesters at night. Police on two separate occasions forced protesters onto streets where they were arrested with zip ties or handcuffs by the hundreds, even though they followed police orders. Some officials even removed protesters’ masks. They were then booked into Harris County Jail, which has the worst outbreak of COVID-19 of any jail in the state. Many people who were arrested were held in jail for longer than 24 hours and report that they were deprived of a mask while in jail and were needlessly and severely exposed to COVID-19.⁵
- Other Departments arrested protesters as well: in Austin, 52 people were arrested in connection to protests between May 29 and June 2;⁶ and multiple arrests were also made during protests in El Paso.⁷

Arresting people simply for participating in protests is unconstitutional. Notably, Dallas Police Chief Reneé Hall announced she would not charge 674 protesters who were on the bridge⁸ and Harris County District Attorney Kim Ogg dropped charges against 796 protesters.⁹ In addition to being unconstitutional, it is especially dangerous during this pandemic. Following mass arrests in Houston, more than 23 officers in the Houston Police Department tested positive for COVID-

⁴ Harris County DA Dismisses nearly 800 criminal cases against protestors arrested during George Floyd marches, KHOU.COM, June 9, 2020, <https://www.khou.com/article/news/local/harris-county-district-attorney-dismisses-charges-protesters-george-floyd/285-0279e98b-0d54-49c1-90ff-07be2fb373ac>

⁵Harris County public defenders raise concerns about processing of mass arrestees by HPD during protests, CLICK TO HOUSTON, June 4, 2020, <https://www.click2houston.com/news/local/2020/06/04/harris-county-public-defenders-raise-concerns-about-processing-of-mass-arrestees-by-hpd-during-protests/>

⁶ Brad Streicher, *Most Austin protestors arrested appear to be Texans, despite governor’s claims*, KVUE ABC, June 2, 2020, <https://www.kvue.com/article/news/investigations/defenders/most-austin-george-floyd-protesters-arrested-texans/269-a7f19c41-8c2b-4e63-a732-bd093adbfb96>

⁷ Names, photos of four protestors arrested on Sunday and Tuesday released by El Paso Police, KTSM.COM, June 3, 2020, <https://www.ksm.com/crime/names-photos-of-four-protesters-arrested-on-sunday-and-tuesday-released-by-el-paso-police/>

⁸ Cassandra Jaramillo and Hayat Norimine, Dallas Police Chief Reneé Hall says protesters who marched on Margaret Hunt Hill Bridge will not be charged, The Dallas Morning News, June 4, 2020, <https://www.dallasnews.com/news/courts/2020/06/04/dallas-police-chief-renee-hall-says-protesters-who-marched-on-margaret-hunt-hill-bridge-will-not-be-charged/>

⁹ Harris County DA to drop charges against more than 600 Houston protesters, June 9, 2020, <https://abc13.com/district-attorney-george-floyd-charges-dropped-protesters/6239927/>

19 and the infection rate is spiking throughout Harris County.¹⁰ Arresting and jailing over 800 people likely exacerbated this crisis, and forcing someone into close confines or the county jail can turn an arrest into a death sentence.

Excessive and Unwarranted Use of Force

The Constitution prohibits police officers from using force against civilians unless it is “objectively reasonable” under the circumstances.¹¹ Although this test depends on the circumstances of a particular case, courts have generally found it to be unconstitutional for police to use force against someone who is (1) not engaging in any serious criminal activity; (2) does not pose an immediate threat to the safety of the officers or others; and (3) is not actively resisting arrest or attempting to evade arrest by flight.¹² In the past few weeks, police officers across Texas have violated people’s constitutional rights by using excessive force in a number of ways:

- In Austin, police violence against the peaceful protesters was unrelenting. On May 31, police fractured the skull of Justin Howell,¹³ 20, who sustained significant brain damage. Police hit him in the head when they indiscriminately volleyed a bean bag round (“small lead pellets [that] are stitched into a synthetic cloth bag”¹⁴) at swaths of peaceful protesters in response to one single protester who threw a water bottle and his backpack towards officers. Police also fractured the jaw of Anthony Evans who reports walking during the protests with his hands in the air away from any “chaos.”¹⁵
- In Dallas, police use of force was egregious and indiscriminate. On May 30, Brandon Saenz,¹⁶ 26, lost his eye and seven teeth and fractured the left side of his face as a result of the force police used on him for peacefully protesting. Mr. Saenz was protesting near the Dallas Public Library, where a demonstration was taking place, when he heard a loud noise. He had been hit with a “non-lethal” rubber bullet to his face and sustained significant and irreparable injury. On another occasion, a young woman¹⁷ who was

¹⁰ Nicole Hensley, *Houston Police See Uptick in COVID cases after George Floyd protests*, HOUSTON CHRONICLE, June 12, 2020, <https://www.houstonchronicle.com/news/houston-texas/houston/article/Houston-police-see-uptick-in-COVID-cases-after-15337391.php#photo-19491131>

¹¹ *Graham v. Connor*, 490 U.S. 386 (1989).

¹² *Id.* at 395.

¹³ Jolie McCullough, *Black Protestor who was critically injured by police in protest is identified, student newspaper reports*, TEXAS TRIBUNE, June 3, 2020, <https://www.texastribune.org/2020/06/01/austin-police-george-floyd-mike-ramos/>

¹⁴ Physicians for Human Rights and the International Network of Civil Liberties Organizations, *Lethal in Disguise: The Health Consequences of Crown Control Weapons* at 23, https://www.aclu.org/sites/default/files/field_document/lethal_in_disguise_inclo_single_page.pdf.

¹⁵ Brittany Ford, *Austin man says his jaw was fractured during protest by officer’s bean bag round*, CBS AUSTIN, June 4, 2020, <https://cbsaustin.com/news/local/austin-man-says-his-jaw-was-fractured-during-protest-by-officers-bean-bag-round>.

¹⁶ Nic Garcia, *A Dallas man lost his eye in a protest. Now he wants Police Chief Hall to find those responsible*, DALLAS NEWS, June 3, 2020, <https://www.dallasnews.com/news/2020/06/03/a-dallas-man-says-he-lost-his-eye-in-a-protest-now-he-wants-chief-hall-to-find-those-responsible/>

¹⁷T. Greg Doucette (greg_doucette), “40 Dallas, TX: police shoot a totally innocent bystander- a woman walking home with her groceries- in the head for sport.” May 31, 2020, 10:02 AM. Tweet https://twitter.com/greg_doucette/status/1267109272342736896?s=20

walking home from the supermarket near protesters, was hit in her head with a rubber bullet. She sustained a laceration and profuse bleeding for no other reason than she was walking down the street where the protests took place.

- In Houston, on May 30,¹⁸ Third Ward residents held a vigil and march towards Emancipation Park. Around 3pm, Black Lives Matter Houston organized a rally and march from Midtown to City Hall. A man¹⁹ who was riding a bicycle through the peaceful march recorded and made public an incident where a police officer kettled a group of protestors onto a street then began to violently pull protestors from a crowd, dragging them outside of the group and throwing them onto the asphalt. The officer then turned on the man that was recording, attacking, and arresting him. He suffered injury to his shoulder, abrasions, and cuts. He was sent to jail for 30 hours, where law enforcement refused to provide him with his seizure medication and a mask. This was not an isolated event in Houston. There have been multiple reports from protestors who were present, where police officers were seen grabbing²⁰ protestors from the crowd and throwing them onto the asphalt to then be arrested.
- In El Paso, on May 31, law enforcement officials deployed two canisters of tear gas, and 20 bean bags against peaceful protestors.²¹ Heavily armored police officers were facing off with peaceful protestors. One protestor threw a water bottle, and almost immediately after, police officers start launching tear gas canisters and bean bag rounds.²²
- In Fort Worth, police arrested more than 50 people between May 29 and June 2, including several dozen protestors who were tear gassed on the West 7th Street Bridge.²³

These stories—which give only a sample of the violence used—believe the common misperception that “less-lethal” weapons have mostly short-term effects; in fact, they can cause injury, death, and permanent disability.²⁴

¹⁸ Jasper Scherer, Dylan McGuinness, and Dug Begley, *Tensions escalate but remain nonviolent after peaceful day of protests in Houston*, HOUSTON CHRONICLE, May 30, 2020, <https://www.houstonchronicle.com/news/houston-texas/houston/article/George-Floyd-s-Yates-HS-classmates-hold-15306000.php>

¹⁹ Anthony Alaniz, “Illegally treated me and throw me in jail for no reason at all. They left my bike behind. Was really from jail after 30 hr for no proof of anything. Look at the end of record.” May 31, 2020 2:10 PM. FACEBOOK LIVE WATCH, <https://www.facebook.com/joe.a.alaniz/videos/10159172905564587/>

²⁰ (masonchic08), “My friend got arrested in downtown Houston for peacefully protesting. The cops surrounded them and forcefully arrested them. #Houstonprotest #BlackLivesMatter” June 2, 2020, 8:20 PM. Tweet <https://twitter.com/masonchic08/status/1267989611856506880?s=20>

²¹ El Paso Police Department; Review of May 31, 2020 & June 2, 2020 Public Assemblies in Memory of George Floyd, at slides 15-16, June 9, 2020, <http://agenda.elpasotexas.gov/sirepub/cache/2/hroom2ac4dygmsugyb5a2d/3857180616202004562463.PDF>

²² “Riot Squad Begins Pushing and Shoving Peaceful Protestors- El Paso Anti-Police Violence Protest 5/31/2020” June 1, 2020, <https://www.youtube.com/watch?v=sP6Aug4NoE&feature=youtu.be>

²³ Chris Blake and Brian Roth, *Protesters, police clash on Fort Worth’s West 7th Street Bridge*, NBCDFW, June 1, 2020, <https://www.nbcdfw.com/news/local/watch-live-protesters-police-in-standoff-on-fort-worths-7th-street-bridge/2379616/>

²⁴ *Supra* n. 14 at 14.

Stop the Violence and Mass Arrests

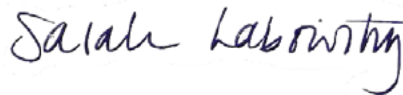
As thousands of people gather across Texas this Juneteenth, it is imperative that you not repeat the wrongs of the past few weeks. Instead of suppressing protesters' freedom of speech through violence and arrests, we ask that you make a public commitment to respect people's constitutional rights and order your police department not to use force or engage in kettling and arrests of peaceful protesters.

Making this public commitment to stop police violence is critical to protecting your residents' lives and slowing the spread of COVID-19. It is also what is required by the U.S. Constitution. Across the country, Black Lives Matter, the ACLU, and other organizations are suing police departments and municipalities that subject peaceful protesters to excessive force, kettling, and mass arrests.²⁵ There is no need to expose your city or police department to further legal liability for failing to abide by the Constitution, especially at a time of economic hardship and budget shortfalls. Given the need to keep protesters safe and the gravity of the constitutional issues at stake, we expect and hope to hear from you before June 19.

Sincerely,



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Sarah Labowitz
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²⁵ See *Black Lives Matter Seattle, et al., v. City of Seattle, et. al*, Case No. 2:20-CV-00887-RAJ, 2020 WL 3128299, at *1 (W.D. Wash. June 12, 2020) (issuing an emergency order to restrain the Seattle Police Department from deploying chemical irritants and projectile weapons against peaceful protesters); *Black Lives Matter D.C., et al. v. Trump, et al.*, Case No. 1:20-cv-01469-DLF (D.D.C. June 4, 2020), https://www.acludc.org/sites/default/files/field_documents/blmdcvtrump_-_amended_class_action_complaint.pdf (challenging the use of force against peaceful protesters to make way for a photo opportunity in front of the White House); *Black Lives Matter Los Angeles, et al., v. Garcetti, et al.*, Case No. 2:20-cv-04940 (C.D. Cal. June 3, 2020) (challenging a curfew and mass arrests of peaceful protesters); see also *Tasia Williams and Vincent Doyle v. City of Dallas, et al.*, Case No. 3:20-cv-01526-L (N.D. Tex. June 11, 2020) (granting an agreed preliminary injunction preventing the Dallas Police Department from using “less-lethal” weapons against protesters and “firing or deploying kinetic impact projectiles into a crowd for any purpose”).