

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 21-cv-2477

**ALEXANDRA BARBOUR,  
BRIANNA BARBER,  
JESSICA BEVERAGE,  
ROBERT HARR,  
CHRISTOPHER HOLLAND,  
NALINA INFANTE,  
CODY SCHMITT, and  
ALEX WOLFSON,**

Plaintiffs,

v.

**THE CITY AND COUNTY OF DENVER, a Colorado municipal corporation, and  
DOES 1-100, in their individual capacities,**

Defendants.

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**COMPLAINT AND JURY DEMAND**

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Plaintiffs, listed above, by and through their counsel of record, BEEM & ISLEY, P.C., and BAUMGARTNER LAW, LLC, respectfully submit this Complaint against the Defendants, and allege and aver as follows:

**JURISDICTION AND VENUE**

1. This action is brought pursuant to 42 U.S.C. §1983 and §1988, and the First, Fourth and Fourteenth Amendments to the United States Constitution. Jurisdiction is founded upon 28 U.S.C. §1331, §1343(a)(3) and (4), and the aforementioned statutory and constitutional provisions.

2. Venue is proper in the United States District Court for the District of Colorado pursuant to 28 USC §1391(b) because the Defendants are citizens and residents of Colorado, and the events, acts and/or omissions giving rise to this action occurred in Colorado.

### **PARTIES**

3. The Plaintiffs, identified individually in greater detail below, are citizens of the State of Colorado who were present, nearby, observing, participating in, and/or otherwise associated with peaceful protests in Denver, Colorado, on various dates starting from May 28, 2020, and going into the month of July 2020.

4. Defendant, The City and County of Denver (the “City”), is and was at all relevant times a Colorado municipal corporation with final policy-making authority over the Denver Police Department (“DPD”) and its police officers.

5. At all relevant times, the City was responsible for supervising, enacting, and enforcing the DPD’s conduct, policies, and practices; the absence of necessary policies and practices; and for the hiring, retention, supervision, and training of employees and agents of the DPD. The City was also responsible for the actions of officers from other law enforcement agencies from whom the City requested assistance.

6. Defendants, Does 1 through 100, are and were at all relevant times officers, employees, and/or agents of the DPD or officers of other agencies or jurisdictions who were acting under color of state law and within the course and scope of their agency or employment with and/or the authorization of the DPD, and who violated the clearly established constitutional rights of Plaintiffs as alleged more fully below. Plaintiffs do not currently know the true names and capacities of the Defendants sued herein as Does 1 through 100, inclusive, and therefore sue these

Defendants by such fictitious names. Plaintiffs will amend this Complaint to allege their true names and capacities when ascertained. The individual Doe Defendants are sued in their individual capacities and are hereinafter referred to as the “Defendant Officers” or “Denver Police Officers” or “Denver Police.”

7. Upon information and belief, the Defendant Officers are citizens of the State of Colorado.

8. All Defendants are responsible in some manner for the damages and injuries alleged in this Complaint.

9. At all relevant times, the acts and omissions of the Defendant Officers were pursuant to the customs, policies, practices, procedures, supervision, and training of the City and the DPD.

**GENERAL ALLEGATIONS AND FACTUAL BACKGROUND**  
*Plaintiffs’ Activities and Injuries*

10. The Plaintiffs are all individuals who attended, observed, were associated with, and/or documented peaceful protests in Denver, Colorado, between the dates of May 28, 2020, and July 19, 2020, in response to officer-involved killings nationwide, in particular, the then-recent killings of George Floyd on May 25, 2020, and Breonna Taylor on March 13, 2020, and other injustices by law enforcement.

11. As alleged in greater detail below, each of the Plaintiffs was injured in some way after being targeted, shot at, gassed, and/or fired upon, either indiscriminately as part of a group or specifically by the Defendant Officers because of their participation in, support of, observation or

documentation of, and/or association with the peaceful protests and demonstrations against police misconduct and brutality.

12. At the time the Plaintiffs were injured and/or arrested by the Defendant Officers, none of the Plaintiffs was rioting, committing any act of violence or aggression, threatening the police or others, or violating any law. At all relevant times, the Plaintiffs were peacefully exercising their constitutional First Amendment rights to free speech, association, and/or documentation of public demonstrations.

13. The injuries and damages caused to Plaintiffs were caused both by the individual unconstitutional actions of the uniformed officers, and by the customs, policies, practices, and lack of proper training and supervision of the City.

***Plaintiff Alexandra Barbour***

14. Alexandra Barbour is a resident of Colorado.

15. On May 31, 2020, Ms. Barbour attended a peaceful protest in Denver, Colorado, with several of her friends.

16. Denver Police Officers approached Ms. Barbour as she was kneeling as a non-threatening symbol of peaceful protest.

17. Ms. Barbour began to retreat and when she turned her back to leave the area, police officers shot her in the right ankle with a rubber bullet or other hard projectile.

18. As a result, Ms. Barbour suffered physical injuries to her right ankle and is suffering from post-traumatic stress disorder. Ms. Barbour required medical treatment for her injuries.

19. Ms. Barbour is also too afraid to attend peaceful protests and her First Amendment rights have been effectively chilled.

***Plaintiff Brianna Barber***

20. Brianna Barber is a resident of Colorado.

21. On May 30, 2020, Ms. Barber attended the peaceful protest in downtown Denver to protest police brutality in the wake of the death of George Floyd.

22. Around 2:30 p.m., a large group of peaceful protesters, including Ms. Barber, marched to the Denver Police Station.

23. Once peaceful protesters arrived at the station, Denver Police Officers, without warning, started shooting tear gas, rubber bullets, and flash-bang grenades indiscriminately into the crowd.

24. Ms. Barber ran to escape the attack. In so doing, she observed a group of teenage girls who had become trapped inside of a fenced area, and who were huddled together while a group of Denver Police Officers continually shot them in the back with pepper balls and rubber bullets.

25. Because the young girls were panicking and obviously being injured, Ms. Barber pushed her knee through a space in the fence so that these girls could use her knee as a step to climb over the fence to escape their attackers.

26. The attacking officers then specifically aimed and fired at Ms. Barber. While helping these girls, Ms. Barber suffered multiple contusions on her right leg in addition to suffering eye and face burns from tear gas and chemicals.

27. Ms. Barber then went to Civic Center Park to provide aid to any people who had been wounded.

28. While in the Park, the Denver Police stormed the park, shooting rubber bullets, tear gas canisters, and flash-bang grenades indiscriminately into the crowd.

29. When Ms. Barber raised her hands in a peaceful “don’t shoot” gesture, Denver Police Officers specifically targeted her and shot her with rubber bullets. They also specifically targeted the protest sign that she was holding above her head.

30. Ms. Barber then fled to the Capitol grounds to escape the barrage of projectiles, but officers began shooting rubber bullets indiscriminately into the crowd there as well.

31. Once on the Capitol grounds, Ms. Barber was surrounded by Denver Police.

32. While Ms. Barber had her hands up in the air, a Denver Police Officer pepper-sprayed Ms. Barber from head to toe. Her body was completely covered by orange chemical spray, and she experienced intense pain from being pepper-sprayed at close range all over her body.

33. Ms. Barber was shot multiple times throughout the day while her hands were in the air. Ms. Barber sustained five contusions to her body from being shot with rubber bullets. Because of the pain, she was unable to sleep for several nights.

34. When Ms. Barber was washing the pepper spray residue off her body, the chemicals got into orifices and sensitive areas, causing excruciating pain for several days. It took multiple days to remove all the spray from her body.

35. The residual chemicals from the pepper spray on her body caused burning sensations and breathing issues to her children if they got too close to her. Thus, Ms. Barber could not be around her children until the residue was gone. As a single mother, this further complicated her recovery.

36. Ms. Barber had continuous ringing in her ears from the flash-bang grenades which lasted for several days. She also experienced depression with associated difficulty in caring for herself and her children, requiring psychological therapy and counseling, a significant modification in her menstrual cycle and treatment for severe menstrual cramping since the incidents, and has been intimidated from exercising her First Amendment Rights to free speech.

***Plaintiff Jessica Beverage***

37. Jessica Beverage is a resident of Colorado.

38. On May 31, 2020, Ms. Beverage was at the State Capitol Building in Denver, Colorado, with a group of peaceful protesters who had formed a line in front of Denver Police officers.

39. Without provocation, Denver Police deployed tear gas at the group of protesters, including Ms. Beverage.

40. As the tear gas was deployed, Ms. Beverage tried to escape the toxic gas by running away, but as she ran, she was shot in the back with a tear-gas canister by police officers.

41. The canister lodged in a helmet, which was attached to her backpack, and melted the plastic on her helmet, fusing the canister to the helmet as it spewed toxic gas.

42. The gas burned Ms. Beverage's eyes and skin and caused her to vomit almost instantly as she fell to the ground.

43. Citizen medics were eventually able to remove the canister from her helmet, at which point they doused Ms. Beverage with milk to counteract the burning in her eyes and on her skin.

44. On July 1, 2020, Ms. Beverage returned to Civic Center Park in Denver to participate in a peaceful protest.

45. Denver Police eventually arrived at the park, and without first giving any dispersal order or giving the protesters any time to gather their belongings and leave the park, Denver Police rushed into the park in full riot gear.

46. Ms. Beverage joined a line of people as a non-violent, passive means of resistance to police aggression. Denver Police then began pushing and hitting peaceful protesters with their batons to break the line which had formed.

47. When the protestors dispersed and started leaving in compliance with police orders, the officers began indiscriminately shooting protestors with tear gas canisters and pepper balls and spraying them with Mace.

48. As Ms. Beverage was attempting to render aid to another protester and trying to remove the protester from the protest area, a Denver Police Officer sprayed Mace directly in Ms. Beverage's face from a short distance away.

49. Ms. Beverage was badly injured by this attack, went into shock, and began shaking uncontrollably.

50. Ms. Beverage was covered in pepper-spray as a result of the Denver Police actions, including her face, eyes, mouth, and clothes. She was not able to wear her contact lenses for several days after the incident, and she was also unable to fully wash the paper-spray from her skin even after taking multiple showers. As a result, her skin burned for several days after the incident.

51. Ms. Beverage had to seek medical treatment for capsaicin poisoning caused by the pepper spray.



52. Ms. Beverage is now fearful of attending community events and peaceful protests, and her First Amendment rights have been effectively chilled by the actions of the DPD and its officers.

***Plaintiff Robert Harr***

53. Robert Harr is a resident of Colorado.

54. On July 1, 2020, Mr. Harr traveled to downtown Denver, Colorado, to help as a medic to those injured while protesting police brutality, the death of George Floyd, and the removal of the homeless population and the confiscation of their property.

55. Around 11:00 p.m., Denver Police Officers began to drive along the border of Civic Center Park, ordering protestors to leave. Mr. Harr also observed officers in riot gear gathering in formation.

56. Peaceful protesters, including Mr. Harr, formed a line around the medic tent to preserve supplies which had been used to help injured protesters and the homeless populations near the park.

57. Denver Police Officers then entered the park in riot gear and began pushing and hitting peaceful protesters with their batons to break the line the protesters had formed. Police also deployed tear gas and smoke bombs at the peaceful protesters, including Mr. Harr.

58. Mr. Harr, who was in front of the line, was sprayed directly in his face with pepper spray by the officers. One police officer violently punched him in his diaphragm with the end of the officer's baton, knocking Mr. Harr to his knees.

59. The Denver Police Officers arrested Mr. Harr even though he told the officers that he was there as a medic.

60. In the course of arresting him, the police officers twisted his arm almost to the point of breaking it and would not let him get medical supplies out of his bag so that he could wash the pepper spray out of his eyes.

61. Mr. Harr was arrested and charged with curfew infraction and failure to obey. Mr. Harr was acquitted of the charge for failure to obey and found guilty of the curfew infraction.

62. Despite his pleas that he was in pain from the chemicals covering his face and body, Mr. Harr was not allowed to wash off the chemicals for the entire eight hours he was in custody.

63. Mr. Harr suffered injuries from the chemical sprays and the extreme twisting of his arm, and he sought treatment for his injuries after being released.

***Plaintiff Christopher Holland***

64. Christopher Holland is a resident of Colorado.

65. On May 29, 2020, Mr. Holland traveled to downtown Denver to peacefully protest police brutality and the death of George Floyd.

66. Mr. Holland marched with other peaceful protesters who were holding up signs and chanting slogans peacefully.

67. Denver Police Officers shot Mr. Holland's wrist with a rubber bullet or other hard projectile as he peacefully marched holding a sign above his head, indicating that the officers were aiming and firing hard projectiles at the level the protesters' heads.

68. The hard projectile caused a large, highly visible contusion on Mr. Holland's wrist with pain and swelling that lasted for several weeks.

69. Mr. Holland was also shot in the legs with pepper-balls which left bruises on his legs and markings on his pants.

70. Mr. Holland sought medical attention for the wrist injury and was diagnosed with a bone contusion. Mr. Holland continues to have wrist pain and soreness with limited range of motion and fatigue after prolonged use. As a result, he now uses a wrist brace.

***Plaintiff Nalina Infante***

71. Nalina Infante is a resident of Colorado.

72. On May 28, 2020, Ms. Infante went to downtown Denver, Colorado, to peacefully protest police brutality and the death of George Floyd.

73. Ms. Infante was peacefully protesting near the State Capitol building where fencing provided both distance and a physical barrier between the protesters and the police, and there was no threat posed to the officers.

74. However, Denver Police arrived in full riot gear and began firing pepper balls and tear gas canisters into the crowd. It created a thick cloud of gas which pushed peaceful protesters, including Ms. Infante, back into the street on Colfax. After the protestors were in the street, the police again fired hundreds of pepper balls relentlessly and indiscriminately into the crowd.

75. Ms. Infante experienced severe burning and stinging all over her body from the amount of tear gas and pepper ball chemicals that filled the air around her. Her skin, eyes, and throat were burning which made her choke and cough, making it hard for her to breath.

76. On Saturday May 30, 2020, Ms. Infante returned to downtown Denver to again participate in peaceful protests at the State Capitol building.

77. While Ms. Infante was peacefully protesting, the Denver Police, in full riot gear, began relentlessly and indiscriminately firing pepper balls, rubber bullets, pepper spray, and flash-bang grenades into the crowd of peaceful protestors, which included Ms. Infante.

78. When Ms. Infante attempted to put traffic cones over tear-gas canisters that were fired into the crowd to prevent the gas from harming other protesters, the Denver Police fired whatever ammunition they had at her, striking her dozens of times and leaving many large and painful bruises all over her body.

79. At another point when Ms. Infante was running to extinguish a tear-gas canister, police shot her on the upper part of her left thigh near her hip with a rubber-bullet. The pain from being hit by this projectile disoriented Ms. Infante, and she collapsed.

80. As a result of this incident, walking was extremely painful for Ms. Infante which made performing any of her work duties excruciating.

81. Ms. Infante sought medical treatment and was diagnosed with a severe hematoma and contusion with significant internal bleeding.

82. Within two weeks, the bleeding caused the bruising and swelling to extend from her hip, down her thigh and nearly to the posterior aspect of her knee. For nearly a month, she had a painful, swollen bruise that covered nearly half of her upper leg.

83. The experience in its entirety, including the injury to her leg, interfered with Ms. Infante's ability to sleep and perform her duties at work and other daily tasks. Her overall quality of life diminished because of the traumatic nature of the experience and the extended period she spent in extreme pain.

84. Ms. Infante is now afraid to attend peaceful protests and her First Amendment rights have been effectively chilled.

***Plaintiff Cody Schmitt***

85. Cody Schmitt is a resident of Colorado.

86. On May 31, 2020, Mr. Schmitt attended the peaceful protests in Denver, Colorado, in the wake of the death of George Floyd.

87. Around 9:45 p.m., as Mr. Schmitt was walking back to his vehicle from a candlelight vigil in Denver's Five Points neighborhood, he followed a large group of people marching in the same direction where his truck was parked.

88. At Colfax and Logan, the police started closing in behind the group and shooting pepper ball bullets, baton rounds, tear gas, and flash-bang grenades.

89. Mr. Schmitt was overcome by a heavy plume of tear gas which temporarily blinded him. As he tried to follow the group, Mr. Schmitt lost his glasses.

90. When Mr. Schmitt stopped to try to find his glasses, he was suddenly grabbed by a Denver Police Officer who handcuffed Mr. Schmitt and forcibly removed his respirator. Another officer then sprayed Mr. Schmitt again with tear gas or pepper spray, thus blinding him again.

91. Despite his request, the police officers refused to retrieve his glasses.

92. The chemicals in his eyes coupled with the loss of his glasses caused Mr. Schmitt significant distress and disorientation. Police officers continuously screamed at and berated him because he was unable to follow their directions.

93. The police officers arrested Mr. Schmitt and charged him with curfew violation and failure to obey.

94. After arriving at the jail, Denver Police Officers treated him aggressively, made threatening comments about remembering him and finding him after his release, placed him in over-crowded conditions at one point and isolation at another point, subjected him to sleep

deprivation, and made disparaging and harassing comments and epithets, such as “retard,” “autistic,” “faggot,” “fairy,” and “creep.”

95. After having a panic attack, he was transported to the psychology wing of the jail. He was seen by someone from Denver Health who prescribed medication, but no one provided the medication to him either during his incarceration or after his release.

96. Mr. Schmitt had another panic attack the day after being released and he developed a nervous stutter. Since the incident, Mr. Schmitt cannot speak without stuttering through sentences.

97. As a result of this arrest and his experience at the jail, Mr. Schmitt also experiences severe anxiety and has been prescribed anxiety medications as a result. Mr. Schmitt has been diagnosed with Post-Traumatic Stress Disorder.

98. The charges against Mr. Schmitt were dismissed by the Denver City Attorney’s Office.

99. Because of this traumatic experience, Mr. Schmitt will no longer participate in peaceful protests because he fears he will again be targeted and physically assaulted by the police for his political beliefs. Mr. Schmitt’s First Amendment rights have been effectively chilled by the City of Denver.

***Plaintiff Alex Wolfson***

100. Alex Wolfson is a resident of Colorado.

101. Mr. Wolfson was out skateboarding on Saturday, May 30, 2020, in downtown Denver, Colorado, near ongoing protests in the wake of the death of George Floyd.

102. Mr. Wolfson rode his skateboard closer to observe the protests out of curiosity, but he was not participating in the protests.

103. Mr. Wolfson observed Denver Police Officers using tear gas against protestors, and he could smell the gas and feel its burn.

104. At approximately 7:45 p.m., Mr. Wolfson left the protest area and started home on foot, carrying his skateboard.

105. When Mr. Wolfson reached the Denver Post Office on the corner of West Colfax Avenue and Cheyenne Place, he was suddenly and without any warning shot in his right eye with a hard projectile fired by Denver Police Officers who were standing across the street on East Colfax Avenue.

106. Mr. Wolfson fell to the ground as his right eye and surrounding area swelled and bled profusely.

107. Mr. Wolfson lost sight in his injured eye and feared that he had lost his eye entirely.

108. He struggled to make his way home alone, and when he arrived, he threw up several times before passing out from the pain, fear, and blood loss.

109. As a result of this incident, Mr. Wolfson suffered severe damage to his right eye which required surgery to repair.

110. Mr. Wolfson still experiences light sensitivity, and he has constant eye floaters that interfere with the clarity of his vision.

111. Mr. Wolfson will never again go to or observe a peaceful protest in fear that he will be targeted and assaulted by the police for his perceived political beliefs. Mr. Wolfson's First Amendment rights have been effectively chilled.

***Factual Allegations Relating to The City of Denver’s Customs, Policies, Practices, Procedures, Supervision, and Training***

112. The protests against police brutality that were going on in Denver during the relevant time period started on or about May 28, 2020 and continued almost daily into the middle of June. Additional protests and demonstrations occurred on a smaller scale into the month of July 2020.

113. In response to the protests, the City, through its law enforcement agency, the DPD, dispatched its officers and officers from other agencies and jurisdictions into the streets of the City. These officers were outfitted in protective riot gear and were armed with “less-lethal” munitions, including chemical sprays (tear gas and pepper spray) and hard potentially injurious projectiles, such as flash-bang grenades, pepper balls, rubber bullets, and other kinetic impact projectiles (“KIPs”), that can be loaded into a gun or “launcher,” aimed, and fired with precision at any target.

114. At or near the beginning of the protests, one Denver Police Officer posted a photograph on Instagram showing himself and two other officers dressed in riot gear with the caption, “Let’s start a riot.”

115. According to media reports, this officer joined the DPD in October 2019 and would have completed the Department’s 3.5-month-long field training program in January or February of 2020—just months before being assigned to the protests.

116. Other DPD officers were found to have used inappropriate force during the protests, including Officers Diego Archuleta and Derek Streeter. Officer Archuleta, who had been with the DPD for four (4) years as of May 2020, had only received one (1) hour of crowd control training during his time at the Academy.



117. Both Officers Archuleta and Streeter were disciplined for failure to distinguish between individuals participating in illegal activity and those merely verbalizing or expressing discontent with police.

118. The Denver Office of the Independent Monitor (“OIM”) issued a detailed report concerning the DPD’s response to the 2020 protests.

119. The OIM report cited observations of DPD officers using less-lethal munitions in troubling ways, specifically including the following:

- a. Deploying pepper ball rounds at persons who were verbally objecting to police behavior and not engaged in apparent physical resistance;
- b. Deploying pepper ball rounds and other projectiles that nearly or directly impacted prohibited areas of the body, including the head, face, and groin; and
- c. Continuing to deploy chemical, gas, impact, or explosive munitions after their use had already caused people to disperse and leave an area.

120. The OIM report found that there was no guidance for high-risk explosive devices, such as rubber-ball grenades and noise-flash diversionary devices (“NFDDs”), and it identified inappropriate and/or insufficient standards for the use of pepper ball projectiles or “direct-fired” pepper balls. Specifically, the report found that the DPD has only one standard for using such pepper balls—defensive resistance—which is defined in the crowd control context as “physical actions by members of a crowd that constitute an unlawful assembly and/or disruption to pedestrian or vehicle traffic.” The report continued, “This means that an officer may strike a person directly with pepper ball in response to nothing more than disrupting traffic. We believe that this standard is too low for direct-fired pepper ball use.”

121. In light of these findings, the OIM report made the following recommendations: that the DPD disallow the use of rubber-ball grenades during crowd control operations; that the DPD articulate clear and specific standards for when rubber-ball grenades and NFDDs may be used; that the DPD revise its standards for pepper ball use; and that direct-fired applications of pepper balls be limited only to circumstances in which a person displays active or aggravated active aggression.

122. The OIM report found that not all officers using projectile launchers, including pepper ball and 40mm launchers, were trained and certified in using such weapons, and it recommended that the DPD implement standards to specify and ensure that only authorized officers may use such weapons during crowd-control events.

123. With respect to mutual aid/assistance from other jurisdictions, the OIM report found that officers from other jurisdictions had used the following types of weapons and ammunition against protesters: (1) at least 73 rounds of rubber-ball projectiles/pellets; (2) more than 150 “less-lethal” shotgun rounds, which can be aimed and fired like traditional shotguns and which can also be mistakenly loaded with and fire lethal ammunition; and (3) more than 200 rounds of “beanbags” filled with lead shot.

124. While there was no reported use of such weapons/ammunition by officers directly employed by the DPD, the Use of Force Policy and Crowd Management Manual of the DPD did not address their use one way or the other.

125. The OIM report not only recommended that the DPD develop agreements, procedures, and command control structures for working with other jurisdictions, but also that the

DPD require its mutual aid partners to adhere to DPD's policies and use only the weapons and ammunition approved by the DPD.

126. The OIM report also found problems with internal tracking and logging of the use of less-lethal weapons during crowd control events; insufficient requirements and policies regarding the wearing and use of body cameras during such events; insufficient supervision and review of officers and corresponding use of force during crowd control operations; failure of officers and supervisors to issue dispersal orders before using force to disperse crowds; lack of sufficient enforcement regarding the prominent display of officers' badge numbers; and allowing untrained or insufficiently trained officers to use "less-lethal" weapons, including pepper ball guns, and corresponding launchers, and other projectile weapons during crowd control operations

127. A full copy of the OIM report, which was released to the public, is attached hereto and is incorporated by reference herein as Exhibit 1.

128. The DPD's failure to train officers, implementation of inappropriate policies and its failure to implement other policies and standards as set forth in the OIM report not only resulted in injuries to the Plaintiffs, but also similar injuries to many other individuals who were participating, observing, or otherwise near the protests in Denver in late May through June/July of 2020. Many of these other injured persons are parties to other federal lawsuits that have already been filed in the U.S. District Court of Colorado.

129. Four plaintiffs filed an action against the City on June 4, 2020, *Abay v. City of Denver*, that was subsequently removed to the United States District Court for the District of Colorado, Civ. Action No. 20-cv-01616-RBJ, and included allegations that the City, through its DPD officers, used and condoned the use of excessive force tactics against peaceful protestors,

members of the media, and even third-parties in the vicinity of the protesters to punish them for demonstrating against police brutality and with the intention and/or effect of discouraging their and others' First Amendment right to free speech and expression.

130. The *Abay* action resulted in the issuance of a temporary restraining order restricting the officers "from employing chemical weapons or projectiles of any kind against persons engaging in peaceful protests or demonstrations ... unless an on-scene supervisor at the rank of Captain or above specifically authorizes such use of force in response to specific acts of violence or destruction of property that the command officer has personally witnessed." *Abay v. City of Denver*, 445 F.Supp.3d 1286, 1294 (D.Colo., June 5, 2020).

131. Around the same time, the City's Executive Director of Safety, Murphy Robinson, sent a memorandum to Chief of Police, Paul Pazen, that referred to the recent protest activities and serious injuries caused by pepper balls and sponge-tipped rounds fired by 40mm launchers. Mr. Robinson requested that the City immediately consider prohibiting the use of 40mm launchers against any individuals in a crowd during any upcoming protests, that there be an internal review to determine whether such launchers are appropriate for crowd control, and that all DPD officers authorized to use pepper balls be reminded of their training, including that pepper balls may only be fired at the ground and not into a crowd of protesters. A copy of this memorandum is attached hereto and incorporated by reference herein as Exhibit 2.

132. However, the Defendant Officers continued to indiscriminately use such weapons against protesters in defiance of the Court's Order and the Director of Safety's requests, and the

Defendant City continued to condone and ratify these actions through inaction for the duration of the protests, which continued through the summer.

133. The allegations on which the restraining order was based are consistent with the attitude expressed in the now-terminated DPD officer's Instagram post and the findings of the OIM report that a policy, practice, and/or custom existed in the DPD that condoned or was callously indifferent to the use of unnecessary and excessive force by its officers against its own citizens.

134. In fact, just days before the federal judge issued the restraining order, the City's leaders and decision-makers, including Denver Mayor Michael Hancock and Denver Police Chief Pazén, publicly praised the DPD officers' use of force to handle the protests, which not only ratified their unconstitutional conduct, but also demonstrated the City's indifference to violations of the constitutional rights of protesters by DPD Officers.

135. Furthermore, even if the City had written policies against the use of unnecessary and excessive force, guidelines for crowd control and dispersal, safety guidelines for using less-lethal munitions and chemicals, and/or guidance related to recognizing and respecting constitutional rights, the City's failure to adequately train its officers on these matters, as evidenced by the Instagram posting by a recently trained DPD officer, the lack of sufficient training in crowd control tactics of a 4-year veteran of the DPD (Officer Archuleta), and the findings and recommendations of the OIM report, demonstrates deliberate indifference toward the constitutional rights of persons with whom its officers come into contact.

136. The City of Denver arrested and charged hundreds of protesters with criminal violations. However, the City dismissed hundreds of criminal charges before the defendant protesters ever had their first appearance in Court. This demonstrates that the City did not arrest

the protesters because they had committed criminal violations, but rather as a means of quelling their protected First Amendment activities and punishing them for the same. This enacted policy of “mass arrests” has repeatedly been held unconstitutional and is a violation of clearly established law.

137. The policy, custom, and/or lack of training that has led to the DPD’s use of unnecessary and excessive force pre-existed the incidents involving the Plaintiffs. This policy, custom, and/or lack of training applies to the unconstitutional treatment of individuals by DPD officers, as well as unconstitutional treatment of groups of protesters.

138. In October 2011, DPD officers used “less lethal” munitions, including tear gas and pepper balls, against protesters involved in the “Occupy” demonstrations. At least one civilian was struck in the face. Despite recommendations of the OIM that the DPD employ its Tactics Review Board (“TRB”) to assess the tactics used during the clash with demonstrators, including compliance with existing policies and procedures, and the need for any revisions to such policies and procedures, related training, and recommendations for crowd control tactics to improve outcomes for future demonstrations, the City declined to accept those recommendations.

139. In January 2017, the OIM again highlighted several noteworthy deficiencies in the DPD’s draft Use of Force Policy, including vague and poorly defined key provisions, lack of clarity for the overall standard for when force may be used, less restrictive standards for use of force as compared to other similar large police agencies in the country, and lack of adherence to national standards, including the definition of deadly force.

140. There are dozens of additional documented claims and lawsuits against the City and/or its police officers going back well over ten years in which the City either paid settlements

or had verdicts against it based on allegations of the use of unnecessary and excessive force against individuals in non-violent situations. Recently, Attorney David Lane compiled a list of just some of those incidents as an exhibit to a Complaint against the City of Denver captioned *Naphtali et al v. City and County of Denver*, Case No. 1:20-cv-02198. Plaintiffs have attached and incorporated by reference herein a version of Mr. Lane’s exhibit, with his permission, as Exhibit 3.

141. In addition to the unlawful mass arrests and the unlawful use of chemical and less-lethal munitions against groups of peaceful protesters, the City also implemented an unconstitutional curfew order that violated the rights of each Plaintiff. On May 30, 2020, the Mayor of Denver declared an “emergency” and announced a curfew order for the entire city, set to begin at 8:00 p.m. that evening. The curfew was issued while thousands of individuals peacefully marched and demonstrated in Denver.

142. The curfew was imposed in all public places within the City and County of Denver, including streets and public rights-of-way, from 8:00 p.m. on May 30, 2020, to 5:00 a.m. on Sunday, May 31, 2020, and from 8:00 p.m. on May 31, 2020, until 5:00 a.m. on June 1, 2020.

143. On June 1, 2020, the Mayor of Denver extended the curfew for four more days. The curfew was in effect each night from 9:00 p.m. to 5:00 a.m. on the evenings of June 1, 2, 3, and 4, 2020.

144. During the curfew hours, “all persons” were “prohibited from using, standing, sitting, traveling or being present on any public street or in any public place, including for the

purpose of travel,” with certain exceptions. However, there was no exception for constitutionally protected First Amendment activity.

145. A violation of the curfew order was a criminal violation punishable by a fine up to \$999.00 or imprisonment up to 300 days.

146. The City’s curfew was implemented by DPD officers to target peaceful protesters (or people believed to be or associated with such protesters), such as Plaintiffs, who were doing nothing more than exercising their First Amendment rights to express themselves, redress grievances, and to support, associate with, observe and/or document others who oppose racial injustice and police misconduct and brutality.

147. Each of the Plaintiffs was directly impacted by this curfew order, either because they were unlawfully arrested on the basis of curfew violation or because their First Amendment rights were suppressed as a direct result of being unable to protest for fear of arrest.

148. With respect to officers from other jurisdictions, the City invited officers from the City of Aurora Police Department (“Aurora PD”) to assist with the City’s response to the protests.

149. A recent internal use-of-force review of the Aurora PD has revealed an extensive lack of training in many areas of policing, specifically including the constitutional limits of use of force and de-escalation tactics. In addition, the report revealed underlying policies and customs where the use of force is permitted under any circumstances and without first attempting to de-escalate matters.

150. The Defendant City, as a participant of past certification review processes of the Aurora PD, knew or should have known of these deficient policies, customs, and training before it invited Aurora PD officers to join and assist officers of the DPD in responding to the protests.



151. If the City had clear policies and guidelines about the proper handling of peaceful demonstrations, crowd control, and the protection of constitutional rights, then the DPD officers and its agents would have known that they could not target or randomly use injurious weapons against peaceful protesters, such as Plaintiffs, who were not committing crimes or violating any laws.

***Plaintiffs' Damages***

152. As a direct and proximate result of the unconstitutional acts, including the use of excessive and unreasonable force against and/or the wrongful arrests of the Plaintiffs by officers and agents of the DPD, and the City's policies, practices, customs, and/or lack of supervision and training, which were the moving force and cause of the officers' misconduct, Plaintiffs have suffered injuries, damages, and losses, including without limitation physical injuries, pain and suffering, loss of enjoyment of life, humiliation, anxiety, mental and emotional distress, and fear of being shot, gassed, injured, arrested, charged, detained, and/or incarcerated for lawfully exercising their First Amendment constitutional rights to peacefully assemble, associate, express their opinions and beliefs, observe and document public events and demonstrations, and redress their grievances, particularly their opinions and beliefs about racial injustice and police brutality.

**CLAIMS FOR RELIEF**

153. Plaintiffs incorporate by reference herein all preceding allegations set forth in this Complaint.

154. The First Amendment of the United States Constitution protects the freedom of speech, association, expression, press, and the right of people to peacefully assemble and petition the government to redress grievances.

155. The Fourth Amendment of the United States Constitution prohibits unreasonable searches and seizures and the use of excessive force in connection therewith. When restraining, detaining, and/or arresting a person, the Fourth Amendment protections only allow police officers to use the amount of force that is reasonable and necessary under the circumstances.

156. The Fourteenth Amendment protects persons from deprivations of life (including loss of or injury to life), liberty, and property without due process of law, including substantive protections against arbitrary abuses of executive power.

157. A municipality may be liable under 42 U.S.C. §1983 where a municipal policy or custom causes the constitutional violations, and the municipality's failure to adequately train its officers may form the basis of such municipal policy or custom. *See City of Canton, Ohio v. Harris*, 489 U.S. 378, 388-90 (1989).

158. The City, through its Chief of Police, Paul Pazen, and Mayor Michael Hancock, had the ultimate decision- and policy-making power for the DPD and ultimate responsibility for adopting and implementing DPD policies and imparting such policies to DPD's police officers and agents acting on its behalf through training and supervision.

**FIRST CLAIM FOR RELIEF**

**42 U.S.C. §1983 - Violation of Fourth Amendment of U.S. Constitution  
Use of Unnecessary, Unreasonable and Excessive Force  
(All Plaintiffs against All Defendants)**

159. Plaintiffs incorporate by reference herein all preceding allegations set forth in this Complaint.

160. At all relevant times, the Defendants acted under color of state law, and the Defendant Officers acted within the course and scope of their employment and/or agency as law enforcement officers for the City.

161. Plaintiffs had protected Fourth Amendment rights against being injured and victimized by the use of unnecessary and excessive force by law enforcement officers and against being arrested without probable cause or other lawful justification.

162. A “seizure” for purposes of the Fourth Amendment to the U.S. Constitution occurs when an officer intentionally restrains the freedom of a person to simply walk away, *Tennessee v. Garner*, 471 U.S. 1, 7 (1985), by means of physical force or a show of authority, *Fogarty v. Gallegos*, 523 F.3d 1147, 1155 (10<sup>th</sup> Cir. 2008). Even an unintended person is “seized” if such person is an object of the detention. *Browar v. County of Inyo*, 489 U.S. 593, 596 (1989).

163. Whether the force used by police officers is unreasonable and thus excessive is determined by an objective analysis of the facts and circumstances that existed at the time the force was applied, including the severity of the suspected crime, whether an immediate threat was posed to the safety of the officers and others, and whether the suspect was actively resisting or evading arrest. *Fogarty*, 523 F.3d at 1159-60.

164. Reasonable officers at the time of the actions alleged herein would have been on notice that using the previously alleged munitions or “any other type of pain-inflicting compliance technique” may constitute excessive force if applied under circumstances that failed to warrant such use of force. *Fogarty*, 523 F.3d at 1161-62.

165. The Defendant Officers violated Plaintiffs’ rights to be free from excessive and unreasonable force and unreasonable seizure when they used “less-lethal” weapons, kettled, and/or arrested Plaintiffs without any lawful justification.

166. The Defendant Officers used unreasonable and excessive force in indiscriminately using “less-lethal” weapons against the Plaintiffs, or alternatively, in specifically targeting certain

Plaintiffs to suppress their perceived expressive activity, and not based on an individualized determination of individual conduct justifying such force, in violation of the Fourth Amendment.

167. The Defendant Officers had no legal justification to attack and/or seize Plaintiffs in the manner and with the level of force used under the circumstances presented.

168. The Defendant Officers engaged in these actions intentionally, willfully, and wantonly, and demonstrated deliberate indifference to and reckless disregard for Plaintiffs' constitutionally protected rights.

169. The Defendant City has a custom, practice or policy of tolerating violations of the Fourth Amendment of the United States Constitution.

170. Final policymakers for the City, including Chief Pazen and Mayor Hancock authorized the actions of the Defendant Officers and/or ratified their actions after-the-fact.

171. The misconduct of the Defendant Officers was undertaken pursuant to the policies, practices, and customs of the City.

172. The City's customs, policies, and/or practices, and the decisions of its final policymakers, were the moving force behind the Defendant Officers' misconduct and thus the cause of the violation of Plaintiffs' constitutional rights.

173. The City failed to properly supervise and/or train their police officers, specifically including the Defendant Officers.

174. The need for policies, training, and supervision of officers on how to properly handle non-violent protesters and demonstrations was so obvious and lacking and so likely to result

in the violation of constitutional rights, that the Defendant City and its policymakers, including Chief Pazen and Mayor Hancock, were deliberately indifferent to the need.

175. Chief Pazen and Mayor Hancock publicly condoned and ratified the Defendant Officers' conduct violating Plaintiffs' Fourth Amendment Rights.

176. Furthermore, the City invited outside law enforcement agencies into the city to interact with protesters and authorized the use of force against them, making these outside law enforcement agencies and officers agents of the City. However, the City did not take adequate measures to ensure that these agents would use force within constitutional limits, or even according to the City's own insufficient policies and training. By authorizing such unconstrained use of force by outside law enforcement, the City demonstrated deliberate indifference to the constitutional rights of the protesters.

177. As a direct and proximate result of the Defendants' unconstitutional acts and omissions, Plaintiffs' constitutional rights were violated, and they suffered injuries, damages, and losses as previously alleged above.

**SECOND CLAIM FOR RELIEF**

**42 U.S.C. §1983 - Violation of Fourteenth Amendment of U.S. Constitution  
Violation of Rights of Due Process and Equal Protection  
(All Plaintiffs against all Defendants)**

178. Plaintiffs incorporate by reference herein all preceding allegations set forth in this Complaint.

179. At all relevant times, the Defendants acted under color of state law, and the Defendant Officers acted within the course and scope of their employment and/or agency as law enforcement officers for the City.

180. The Defendant Officers violated the Plaintiffs' rights to due process and equal protection under the Fourteenth Amendment by indiscriminately attacking them with gas/chemical and other less-lethal weapons, or by specifically targeting and attacking certain Plaintiffs and/or arresting them for violating the curfew, peacefully protesting, or otherwise lawfully exercising their First Amendment rights.

181. The Defendant Officers' conduct was deliberately indifferent to the Plaintiffs' rights, shocks the conscience, and violated the decency of civilized conduct under the Fourteenth Amendment.

182. As previously alleged, the Defendant Officers' misconduct was undertaken pursuant to the policies, practices, and customs of, and/or the lack of sufficient policies, training and supervision by the Defendant City and its policymakers, which were the moving force behind the Defendant Officers' misconduct and thus the cause of the violation of the Plaintiffs' rights.

183. In particular, the City issued a curfew order that was unconstitutionally applied to protesters (actual or perceived). While the curfew made exceptions for persons engaged in certain lawful conduct, it did not do so for persons lawfully engaged in activities protected by the First Amendment.

184. This curfew order prompted the Defendant Officers to target and arrest persons, such as Plaintiff Schmitt, for doing nothing other than participating in activities protected by the First Amendment while not arresting persons who violated the curfew but were not protesting.

185. As previously alleged, the Defendant City's policies, practices, customs, and/or lack of sufficient policies, training, and supervision by its policymakers demonstrate the City's deliberate indifference toward the rights of Plaintiffs and others like them.

186. Chief Pazen and Mayor Hancock publicly condoned and ratified the Defendant Officers' conduct violating Plaintiffs' Fourteenth Amendment Rights.

187. Furthermore, the City invited outside law enforcement agencies into the city to interact with protesters and authorized the use of force against them, making these outside law enforcement agencies and officers agents of the City. However, the City did not take adequate measures to ensure that these agents would use force within constitutional limits, or even according to the City's own insufficient policies and training. By authorizing such unconstrained use of force by outside law enforcement, the City demonstrated deliberate indifference to the constitutional rights of the protesters.

188. As a direct and proximate result of the Defendants' unconstitutional acts and omissions, Plaintiffs' constitutional rights were violated, and they suffered injuries, damages, and losses as previously alleged above.

**THIRD CLAIM FOR RELIEF**

**42 U.S.C. §1983 - Violation of the First Amendment of the U.S. Constitution  
Infringement of Free Speech, Assembly, Association and/or Press  
(All Plaintiffs against All Defendants)**

189. Plaintiffs incorporate by reference herein all preceding allegations set forth in this Complaint.

190. At all relevant times, the Defendants acted under color of state law, and Defendant Officers acted within the course and scope of their employment and/or agency as law enforcement officers for the City.

191. Plaintiffs had protected First Amendment rights to express their viewpoints and support by attending peaceful protests to redress grievances against racial injustice and police

misconduct/brutality, to assemble and associate with other peaceful protesters, and/or to record and document such public protests and the public response by the police to such protests.

192. As previously alleged, Plaintiffs were peacefully protesting or otherwise associated with the peaceful protests by observing, documenting, or being in the area where peaceful protests were occurring at the time they were attacked and/or arrested by the Defendant Officers.

193. As previously alleged, there was no lawful reason or justification for attacking and/or arresting them.

194. The Defendant Officers violated the Plaintiffs' First Amendment rights by targeting them as protesters or perceived protesters and attacking and/or arresting them for expressing perceived viewpoints and/or ostensibly for violating an unconstitutionally applied curfew.

195. The Defendant Officers violated the Plaintiffs' First Amendment rights by attacking and/or arresting them to suppress, punish, or retaliate against Plaintiffs for peacefully expressing their viewpoints or otherwise for their association with and support for the peaceful protests.

196. As previously alleged, the City had issued a curfew that provided no exceptions for activities protected by the First Amendment.

197. Accordingly, the City adopted an official policy of targeting and arresting only protesters during the curfew hours and not non-protesters. This was intended to further suppress Plaintiffs' protected First Amendment activities, including the right to free speech, expression, and assembly, and it violated the First Amendment.

198. As previously alleged, the Defendant Officers violated Plaintiffs' First Amendment rights by attempting to "control" and break-up peaceful protests by using "less-lethal" weapons



against and/or kettling the Plaintiffs without issuing warnings or dispersal orders, giving adequate time to disperse, or any lawful justification whatsoever.

199. These actions were undertaken in order to discourage and suppress the exercise of Plaintiffs' First Amendment rights.

200. Furthermore, the right to document information is grounded in the Free Speech and Petition Clauses of the First Amendment if the purpose of documenting the information is to use it to petition the government for redress of grievances. The right to document information is also grounded in the Free Press Clause if the purpose is to publish and disseminate it to other people.

201. The First Amendment right to document and disseminate information includes the right to photograph, audio- and video-record police officers performing their duties in public, as well as the right to photograph, audio- and video-record demonstrations.

202. Police officers, such as the Defendant Officers, who are performing their public duties in public places have no reasonable expectation that their conduct is private and that it will not be recorded, documented, published, and disseminated.

203. The Defendant Officers' actions in using "less-lethal" weapons against those Plaintiffs who were recording or documenting police officers performing their public duties in public places violated the First Amendment rights of those Plaintiffs.

204. The Defendant Officers' actions in using "less-lethal" weapons against those Plaintiffs who were peacefully protesting or otherwise associated with peaceful protesters to control and suppress their speech violated the First Amendment rights of those Plaintiffs.

205. As previously alleged, the Defendant Officers' misconduct was undertaken pursuant to the policies, practices, and customs of, and/or the lack of sufficient policies, training

and supervision by the Defendant City and its policymakers, which were the moving force behind the Defendant Officers' misconduct and thus the cause of the violation of the Plaintiffs' rights.

206. As previously alleged, the Defendant City's policies, practices, customs, and/or lack of sufficient policies, training, and supervision by its policymakers demonstrate the City's deliberate indifference toward the rights of Plaintiffs and others like them.

207. Chief Pazen and Mayor Hancock publicly condoned and ratified the Defendant Officers' conduct violating Plaintiffs' First Amendment Rights.

208. Furthermore, the City invited outside law enforcement agencies into the city to interact with protesters and authorized the use of force against them, making these outside law enforcement agencies and officers agents of the City. However, the City did not take adequate measures to ensure that these agents would use force within constitutional limits, or even according to the City's own insufficient policies and training. By authorizing such unconstrained use of force by outside law enforcement, the City demonstrated deliberate indifference to the constitutional rights of the protesters.

209. As a direct and proximate result of the Defendants' unconstitutional acts and omissions, Plaintiffs' constitutional rights were violated, and they suffered injuries, damages, and losses as previously alleged above.

**FOURTH CLAIM FOR RELIEF**

**42 U.S.C. §1983 - Violation of Fourth Amendment of U.S. Constitution**

**Unlawful Arrest**

**(Plaintiff Schmitt against All Defendants)**

210. Plaintiffs incorporate by reference herein all preceding allegations set forth in this Complaint.

211. At all relevant times, the Defendants acted under color of state law, and the Defendant Officers acted within the course and scope of their employment and/or agency as law enforcement officers for the City.

212. Plaintiff Schmitt was arrested by one or more of the Defendant Officers who cannot be identified until the arrest records are released. Plaintiffs have requested the records for Mr. Schmitt's arrest, but the City has refused to comply with its obligations under the Colorado Open Records Act and the Colorado Criminal Justice Records Act. The City's refusal to follow the open records law demonstrates their commitment to flouting the law with regard to Mr. Schmitt and other protesters.

213. Plaintiff Schmitt's arrest was made without probable cause that he had violated any law.

214. The criminal charges against Mr. Schmitt were unconditionally dismissed.

215. As previously alleged, the Defendant Officers' misconduct was undertaken pursuant to the policies, practices, and customs of, and/or the lack of sufficient policies, training and supervision by the Defendant City and its policymakers, which were the moving force behind the Defendant Officers' misconduct and thus the cause of the violation of the Plaintiff Schmitt's rights.

216. As previously alleged, the City's policies, practices, customs, and/or lack of sufficient policies, training, and supervision by its policymakers demonstrate the City's deliberate indifference toward the rights of Plaintiff Schmitt and others like him.

217. Chief Pazen and Mayor Hancock publicly condoned and ratified the Defendant Officers' conduct that violated Plaintiff Schmitt's Fourth Amendment Rights.

218. Furthermore, the City invited outside law enforcement agencies into the city to interact with protesters and authorized the arrests and use of force against them, making these outside law enforcement agencies and officers agents of the City. However, the City did not take adequate measures to ensure that these agents would act within constitutional limits, or even according to the City's own insufficient policies and training. By authorizing such unconstrained actions by outside law enforcement, the City demonstrated deliberate indifference to the constitutional rights of the protesters.

219. As a direct and proximate result of the Defendants' unconstitutional acts and omissions, Plaintiff Schmitt's constitutional rights were violated, and he suffered injuries, damages, and losses as previously alleged above.

#### **PRAYER FOR RELIEF**

Wherefore, Plaintiffs respectfully request that this Court enter judgment in their favor and against the Defendants, jointly and/or severally, as follows:

- a. General and compensatory damages in an amount that will fully and fairly compensate Plaintiffs for their injuries, damages, losses, and violation of their federal constitutional rights available pursuant to 42 U.S.C. §1983 and any other applicable federal law;
- b. Pre- and post-judgment interest;
- c. Reasonable attorneys' fees, expert witness fees, and the cost of this action, pursuant to 42 U.S.C. §1988 and any other applicable law; and
- d. Declaratory and injunctive relief, as appropriate;
- e. Issuance of an Order mandating appropriate equitable relief, including but not limited to:

- (i) The imposition of appropriate policy changes designed to avoid future similar misconduct by Defendants;
  - (ii) Imposition of appropriate disciplinary action against employees of the City;
  - (iii) Mandatory training designed to avoid future similar misconduct by Defendants;
- f. Such other and further relief as the Court deems proper and just.

**PLAINTIFFS DEMAND TRIAL TO A JURY ON ALL ISSUES SO TRIABLE**

Dated this 13th day of September, 2021.

Respectfully submitted,  
BEEM & ISLEY, P.C.

*s/ Clifford L. Beem*

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EXHIBIT 1 to Complaint and Jury Demand



# The Police Response to the 2020 George Floyd Protests in Denver, an Independent Review

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Nicholas E. Mitchell  
Independent Monitor





## The Office of the Independent Monitor

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The Office of the Independent Monitor ("OIM") is charged with working to ensure accountability, effectiveness, and transparency in the Denver Police and Sheriff disciplinary processes. The OIM is responsible for:

- ◆ Ensuring that the complaint and commendation processes are accessible to all community members;
- ◆ Monitoring investigations into community complaints, internal complaints, and critical incidents involving sworn personnel;
- ◆ Making recommendations on findings and discipline;
- ◆ Publicly reporting information regarding patterns of complaints, findings, and discipline;
- ◆ Making recommendations for improving Police and Sheriff policy, practices, and training;
- ◆ Conducting outreach to the Denver community and stakeholders in the disciplinary process; and
- ◆ Promoting alternative and innovative means for resolving complaints, such as mediation.



## OIM Staff:

### Policy

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Alyssa Perez Morrison, Senior Policy Analyst

James Davis, Senior Policy Analyst

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Kerri Wyman, Deputy Monitor

Stephanie Howard, Deputy Monitor

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Gianina Horton, Youth Outreach Project Manager

Asiya Mustefa, Youth Outreach Project Coordinator

# Contents

<i>Introduction and Factual Summary</i>	1
Factual Summary . . . . .	2
The First Five Days of the GFP in Denver. . . . .	2
Size and Scale of the GFP . . . . .	6
Officer and Community Member Injuries . . . . .	7
Other Impacts . . . . .	8
<hr/>	
<i>Methodology</i>	9
<hr/>	
<i>Use of Force</i>	11
Policing Protests and Protesting Police . . . . .	11
OIM Information Requests and Documentation Gaps. . . . .	12
Less-Lethal Equipment and Munitions Used During the GFP . . . . .	12
Internal Controls on the Use of Force by DPD Officers. . . . .	16
Less-Lethal Munitions . . . . .	16
Officer Rosters. . . . .	19
Body Worn Cameras . . . . .	20
Delayed/Vague Officer Statements about Uses of Force. . . . .	23
Inconsistent Documentation of Crowd Dispersal Orders . . . . .	24
Crowd Dispersal Without Dispersal Orders . . . . .	26
Visibility of Officer Identification on Riot Gear. . . . .	27
Use of Pepperball and 40mm Launchers by Uncertified Officers. . . . .	28
Conclusions and Recommendations . . . . .	29
Substantive Use of Force Issues and DPD Policy . . . . .	31
Uses of Force Referred for Review and Possible Investigation . . . . .	32
Policy Deficiencies for Less-Lethal Equipment and Munitions. . . . .	32
No Guidance for High-Risk Explosive Devices . . . . .	33
Inappropriate Standard for Direct-Fired Pepperball . . . . .	36
Conclusions and Recommendations . . . . .	37

---

<i>Mutual Aid</i>	39
The DPD was Unable to Produce Relevant Mutual Aid Agreements . . . . .	.40
Responding Mutual Aid Partners and the Aid They Provided . . . . .	.42
Inconsistent Policies, Equipment, and Munitions . . . . .	.43
Use of Force Standards and Limitations . . . . .	.44
Less-Lethal Equipment and Munitions . . . . .	.45
Conclusions and Recommendations . . . . .	.47

---

<i>Additional Issues Referred for DPD Review</i>	49
The Role of the Operations Chief During Mass Protests . . . . .	.49
Overcrowded Radio Channel and “Bonking” During the GFP. . . . .	.50
Demand for Additional Crowd Control Training . . . . .	.51
Recommendation . . . . .	.52

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<i>OIM Recommendations</i>	53
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Dear Mayor Hancock, Denver City Council members, Executive Director Robinson, Chief Pazen, and Denver Citizen Oversight Board members:

I provide the enclosed report in response to a unanimous request from the Denver City Council. The Council asked Denver’s Office of the Independent Monitor (“OIM”) to conduct an investigation into the Denver Police Department’s (“DPD”) responses to the demonstrations that began in Denver on May 28, 2020 (“George Floyd Protests” or “GFP”), following the murder of George Floyd by Minneapolis police officers. We were asked to evaluate, among other things, the DPD’s approaches to crowd control, including officer uses of force during the GFP.

This report summarizes the results of the OIM’s independent investigation and review during the past six months. It addresses the unprecedented size and scale of the demonstrations, which resulted in serious injuries to many officers and community members, as well as deficiencies in the DPD’s internal controls on officer use of force, its policies and practices concerning less-lethal equipment and munitions, and the mutual aid framework under which neighboring law enforcement agencies provided assistance in Denver. The report also makes 16 actionable recommendations to the DPD that are intended to help to keep officers and community members safer in the event of future, similar protests in Denver.

I want to recognize Executive Director of Safety Murphy Robinson and Chief of Police Paul Pazen for immediately expressing their complete support for this review. Welcoming this level of scrutiny is not easy, and it demonstrates their strong commitment to public safety and building community trust. DPD officers and command staff demonstrated a similar commitment by responding thoroughly to our extensive document requests, and volunteering to participate in interviews. Community members also provided substantial information and assistance. I am thankful for the high level of collaboration and transparency that we experienced as we conducted this review.

I also want to thank the OIM team for their tireless work during this project. The staff worked exceptionally hard, routinely giving up nights and weekends, to accomplish this review so quickly. I am so grateful for their commitment to collaborative public safety, and to the people of the City and County of Denver.

Sincerely,

Nicholas E. Mitchell  
Independent Monitor  
Denver, Colorado



## Introduction and Factual Summary

This report is presented in five sections. In the *Introduction and Factual Summary*, we provide a brief overview of key facts from the first five days of the demonstrations that were prompted by the murder of George Floyd (“George Floyd Protests” or “GFP”) that give context for our analysis in the rest of the report. *Methodology* summarizes the methods we used to perform this review and the sources of information that we relied upon.

*Use of Force* details the various types of munitions used by the Denver Police Department (“DPD”) during the GFP, including gas grenades, chemical and impact projectiles, and explosive devices. With an eye on national standards, we also explore the internal systems, sometimes known as “internal controls,” that are often used to help manage police use of force during large-scale protests. This includes the systematic use of body worn cameras (“BWC”), accurate tracking of less-lethal munitions, prompt documentation of all uses of force, and restricting high-risk, less-lethal equipment to officers who have been certified to use them properly. During our review, we discovered significant gaps in the DPD’s use of each of these internal controls during the GFP. We also discuss areas of DPD policy, such as the lack of guidance on high-risk explosive devices during crowd control events, that we believe can be improved.

*Mutual Aid* details the many law enforcement agencies that provided aid in Denver during the GFP and explores the framework under which they operated, which was deficient in important ways. Most notably, it permitted each agency to follow its own guidelines about when force could be used, rather than the DPD’s standards, and use less-lethal tools that were not permitted under DPD policy. Finally, in *Additional Issues Referred for DPD Review*, we refer certain issues to the DPD for its own consideration. This includes concerns expressed to us by some DPD supervisors and officers: 1) that they received insufficient tactical and strategic direction in the field, 2) that the single radio channel used for all police radio transmissions during the GFP was overcrowded and often inaccessible, and 3) that the DPD has not made enough recent investments in crowd control and field force operations training to properly prepare officers for an event like the GFP. Each section proposes changes to DPD policies and practices that are intended to remedy the identified issues and help keep both DPD officers and community members safer in the event of future, similar protests.



## **Factual Summary**

On May 25, 2020, four officers from the Minneapolis Police Department arrested George Floyd, a Black man, after receiving a complaint that he had used a counterfeit twenty-dollar bill. Mr. Floyd was pinned down by three officers, and seventeen minutes after the first police car arrived on scene, Mr. Floyd lay unconscious in the street with no pulse. The next day, the Minneapolis Police Department fired all four officers, and shortly thereafter, all were criminally charged.

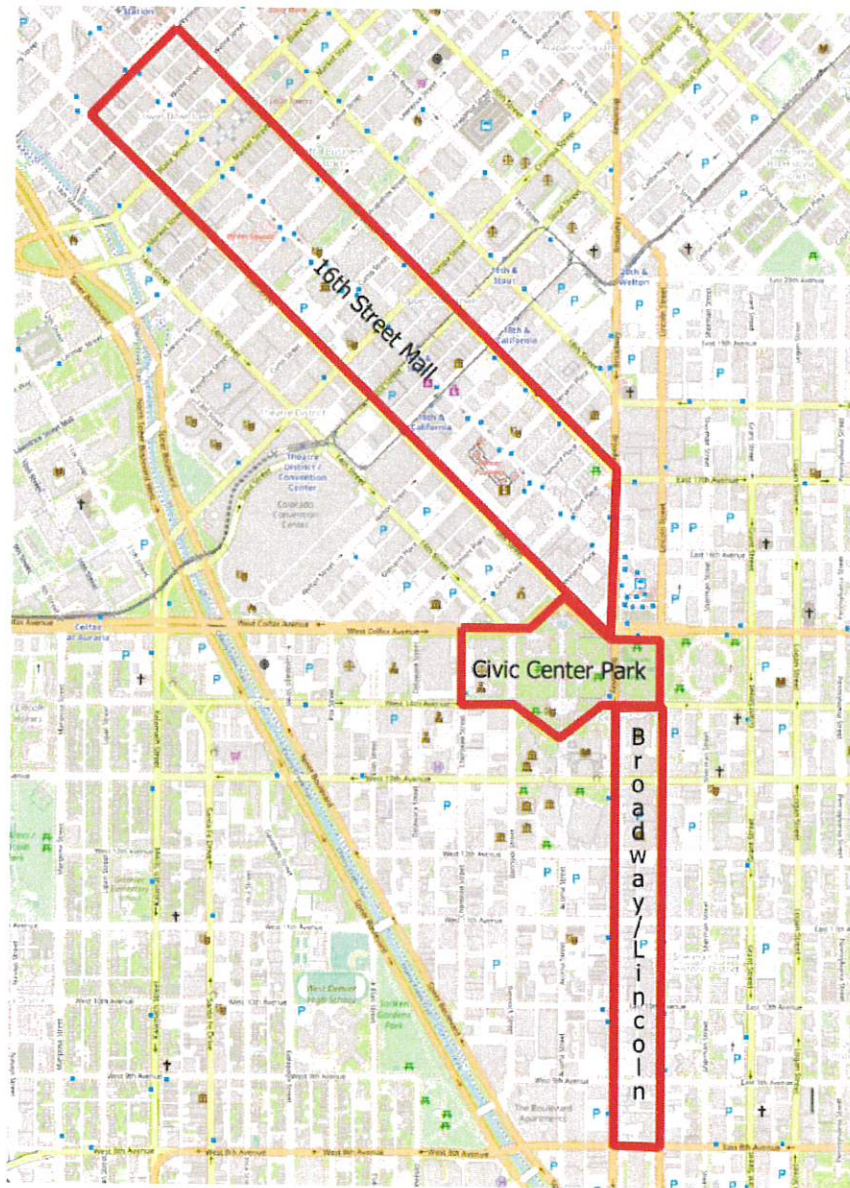
In the preceding months, the deaths of several other Black individuals at the hands of law enforcement had garnered national attention, including the death of Breonna Taylor, who was shot and killed in her bed in Louisville, Kentucky on March 13, during the execution of a no-knock search warrant. Over the last decade, protests concerning policing and allegations of systemic racism in the criminal justice system have become more frequent. The increasing prevalence of BWC and bystander cell phone footage has prompted greater awareness for many communities about the deaths of Black, Indigenous, and other people of color during police interactions. In the days after Mr. Floyd's death, protests erupted throughout the United States, starting in Minnesota on May 26 and spreading to dozens of other cities in the succeeding days, including Denver.

Beginning on May 28, Denver experienced several weeks of sustained protests that ended in mid-June. The first five protest days were characterized by peaceful demonstrations, as well as property destruction, fires, and violence that resulted in significant injuries to both officers and community members.

## **The First Five Days of the GFP in Denver**

On the first day of the GFP, May 28, crowds began to form at approximately 5 p.m., and word quickly spread that a significant protest was growing near the Colorado State Capitol Building. Although the protest largely developed organically, numerous people organized and social media posts drew many people downtown. DPD officers were caught off guard by how quickly the protests swelled and the anger of some in the crowd. The DPD immediately opened a Command Post, and an Incident Commander was appointed to assume primary command responsibility. On that first day and throughout the protests, the Incident Commander monitored a flow of video footage from hundreds of High Activity Location Observation ("HALO") cameras spread throughout downtown to assess conditions and to direct police resources to areas of need.

To facilitate the management of the police response, the DPD divided the protest area into three primary sections: the 16<sup>th</sup> Street Mall, the Broadway/Lincoln corridor, and Civic Center Park.



Officers were deployed within those sections, and the Incident Commander assigned a lieutenant to command the officers in each. Specialized teams, such as Metro/SWAT and the Gang Unit used tactical vehicles, such as Rapid Deployment Vehicles (“RDVs”), to respond to hot spots throughout downtown. The DPD initially assigned several police radio channels to the GFP in order to separately communicate with the officers in each section. This soon proved unworkable, however, prompting the DPD to consolidate communication with all officers onto a single police radio channel.

On the first day, protestors divided into two primary groups: one initially stayed near the State Capitol and then moved east toward the District 6 Police Station, and another went west and entered I-25. Officers were directed to parallel each group and respond, as needed. At approximately 5:30 p.m., there were gunshots near the Colorado State Capitol Building. As night approached, the DPD determined that it would need additional officers and placed a city-wide call for assistance. As discussed later in this report, DPD records are inconclusive about the number of DPD officers who policed the GFP during its first four days. However, the DPD has estimated that 150–200 officers were working the protest on the first day.

As night fell, confrontations erupted, some violent, with officers deploying less-lethal munitions and some individuals throwing projectiles at officers, damaging buildings, and stealing property. At approximately 10:30 p.m., DPD teams began reporting that they had depleted their supplies of certain less-lethal munitions, and DPD command staff began requesting munitions resupplies from neighboring jurisdictions. The DPD arrested a total of 28 people on May 28, and multiple officers and civilians were injured, some seriously.<sup>1</sup>

By May 29, the second protest day, there were additional clashes, and DPD’s command staff began requesting that neighboring law enforcement agencies (“Mutual Aid Partners”) send officers to support the DPD. At least one agency responded to Denver that night with officers. But even with that assistance, the number of officers on the street remained relatively low, with only 100–150 officers working the protests on the second day. Violence again erupted, with individuals throwing projectiles, damaging buildings, and officers deploying less-lethal munitions. The downtown was described by some as being like a “warzone.” The DPD and its Mutual Aid Partners arrested an additional 21 people, and more officers and civilians were injured.

On May 30, Denver Mayor Michael B. Hancock announced a citywide curfew that went into effect between 8 p.m. and 5 a.m. and was to last until June 1. To address

compounding munitions shortages, the Colorado State Patrol flew its plane to Wyoming to purchase less-lethal munitions directly from a manufacturer, including some munitions that had been ordered by the DPD. By this point, a large number of officers from over five neighboring law enforcement agencies were providing assistance to the DPD. Approximately 450–500 DPD and Mutual Aid Partner officers were then working the GFP, a substantial increase from the previous two days. Again, as day turned to night, there was violence in the streets that resulted in injuries to both civilians and officers. An additional 64 arrests were made, the vast majority for violating the curfew.

On May 31, 450–500 officers were deployed to work the GFP, which included officers from both the DPD and its Mutual Aid Partners. At night, the demonstrations moved eastbound on Colfax Avenue and protesters approached the District 6 Police Station. The DPD command staff had seen reports that protesters in other cities had taken over or started fires in police buildings, and they were prepared to defend District 6 if it became necessary. There were clashes at the District 6 Police Station, but protesters were eventually turned away. The DPD and its Mutual Aid Partners made 102 protest-related arrests, and many civilians and officers reported injuries.

By many accounts, June 1, the fifth day of protests, had a different character than the previous days. Chief Paul Pazen marched with protesters during the day, clearly voicing his desire to work together towards making positive change in Denver. Mayor Hancock extended the curfew to June 4 and pushed the curfew time to 9 p.m. At night, there was limited activity in Civic Center Park. Protesters held a moment of silence for George Floyd outside the Colorado State Capitol Building. Even though 500–550 DPD and Mutual Aid Partner officers were assigned to the protests and made 124 arrests, many felt that the chaos and violence of the first four days had begun to pass.

After the fifth day, conditions became much calmer on the street. The GFP continued for several more weeks but there was limited violence and far less property damage. In these subsequent weeks, the DPD made a total of 111 arrests, a fraction of the number from the first five days.

## Size and Scale of the GFP

In Denver's history, protests have often been uni-directional, and included coordinated marches that culminated with rallies and speeches at the Colorado State Capitol Building, Civic Center Park, and other government facilities. For example, in 2012, an Occupy Denver protest started at Civic Center Park, made a loop through Capitol Hill, marched down the 16<sup>th</sup> Street Mall, and then returned to the Colorado State Capitol Building.<sup>2</sup> That march was so coordinated that when the people leading it made a wrong turn, organizers quickly got them back on track because they were behind schedule.<sup>3</sup> Similarly, after the 2016 officer-involved shooting of Philando Castille in Minnesota, hundreds of people marched along the 16<sup>th</sup> Street Mall in Denver and ended at the Capitol.<sup>4</sup> During that protest, police escorted the protesters and blocked traffic on their behalf.<sup>5</sup>

In contrast, the GFP was multi-directional and developed quickly, without an obvious schedule for the first five days. Groups often split from each other and moved in different directions without easily discernable intended destinations. The DPD redirected protesters several times when officers believed that they were attempting to storm the District 6 Police Station or to enter the highway to stop interstate traffic. Often, many protesters remained on the streets long after midnight. By the third day of the protests, Saturday, May 30, an estimated ten thousand people or more were expected to fill the streets of Denver.<sup>6</sup>

The arrest data demonstrates the geographic dispersion of the GFP. The DPD recorded protest-related arrests as far south as 10th Avenue and Acoma Street, as far northwest as 16th Street and Wazee Street along the 16th Street Mall, and as far east as Colfax Avenue and Downing Street, beyond where clashes took place near the District 6 Police Station at Colfax Avenue and Washington Street. The total area where protest-related arrests were made stretched more than a mile from north to south and east to west.

Due to the unexpected nature of the protests, the DPD was caught with limited personnel, especially for the first two days, which were staffed by an estimated 150–200 and 100–150 DPD officers, respectively. While many officers were assigned to fixed locations, such as skirmish lines near sensitive locations, mobile response teams on RDVs were also deployed to quickly traverse the downtown to address emergencies. Yet, these teams often struggled to cross streets, parks, and other areas blocked by protesters or traffic, causing delayed response times. After a few days, the DPD adjusted by assigning mobile response teams to distinct parts of the

downtown area with particular consideration for major thoroughfares that could be blocked, which sped up response times significantly.

Other units were assigned to shadow splintered protest groups to report about their plans or direction of travel. All of these resources, officers, and methods of responding to the GFP notwithstanding, every command officer we spoke to during this review said that the protests were extremely difficult to manage, with many calling them the most challenging situation they have faced in decades on the DPD.

## **Officer and Community Member Injuries**

The first five days of the GFP led to injuries for both officers and community members, as the generally peaceful demonstrations during the day turned into violent clashes at night. The DPD reported 81 officer injuries, with 11 officers placed on limited duty, and 4 needing to take time off work. According to the DPD, the vast majority were caused by individuals throwing objects, such as rocks, fireworks, and other projectiles at officers. We are aware of no other event in Denver's recent history that resulted in this number of injuries to DPD officers.

Many community members were also hurt, though the precise number is impossible to determine as many of those injuries went unreported.<sup>7</sup> Data from the Denver Health Paramedic Division ("DHPD") are an imperfect measure as they necessarily undercount the number of community member injuries. Yet, the data may include many of the most serious injuries. From May 28 to June 7, DHPD responded to 125 calls for service in the protest area for individuals not identified as law enforcement personnel, 74 of which resulted in hospital transports. They included impact projectile injuries and breathing problems associated with chemical munitions. Some of the patients were clearly injured while protesting or were bystanders to the protests. For many of the calls for service, however, the information available from DHPD was insufficient for us to make a determination about the cause or severity of the injuries.

As of the date of this report, three lawsuits have been filed against the DPD and the City and County of Denver alleging serious injuries as a result of enforcement actions during the GFP, and more than 50 additional notices of claim have been served. Many of those notices involve alleged serious bodily injury to protesters, including grievous eye injuries and ligament damage resulting from less-lethal projectile strikes. One of the lawsuits sought and obtained a temporary restraining order prohibiting DPD officers from using chemical munitions unless authorized

by a supervisor, among other matters. More than 100 complaints were filed alleging DPD misconduct during the GFP, and approximately 50 of these investigations remain open to this day.

## Other Impacts

Significant property damage occurred downtown during the GFP, including vandalism of public and private property. The Denver Fire Department responded to more than 200 calls related to fires during the GFP. Private businesses reported approximately \$2 million in damage and the damage to city property was estimated at just over \$1 million.<sup>8</sup> The destruction to the Colorado State Capitol Building, which included broken windows, doors, gates, and security cameras, was estimated at \$1.1 million.<sup>9</sup> The DPD also reported over \$76,000 in property damage, almost all to police vehicles.

More than 400 people were arrested during the GFP. Many of those arrests were for curfew violations, which were ultimately dropped by prosecutors. Some arrests for other charges, such as trespassing, theft, burglary, and assault on a peace officer, for example, are still pending in court. Nearly 50 arrests included weapons-related charges, and 33 firearms were seized.

Some DPD officers who we spoke with described physical or emotional after-effects from policing the GFP that linger to this day. Similarly, some community members have described anger, trauma, and a loss of confidence in the police based on their experiences. The damage to trust between officers and the community that resulted from the GFP is impossible to quantify.

## Methodology

Between June and November 2020, the Office of the Independent Monitor (“OIM”) gathered and reviewed information from many sources to prepare this report. The OIM analyzed the DPD’s Crowd Management Manual and sections of its Operations Manual that address the use of force, emergency procedures, BWC requirements, and uniforms and equipment. To understand the specific application of these policies and procedures during the first five days of the GFP, the OIM requested and reviewed documentation for those days, including operational plans, after-action reports, officer rosters, less-lethal munition inventories, officer use of force statements, computer-aided dispatch data, injury reports, and arrest records.

Information from other City and County of Denver (“CCD”) departments and the DPD’s Mutual Aid Partners was also important. The OIM analyzed data regarding Denver Fire Department and Denver Health calls for service, as well as Emergency Operations Center situation reports from the Denver Office of Emergency Operations. The DPD produced documentation from some of its Mutual Aid Partners, including memoranda of understanding (“MOU”) and reports that documented their specific actions during the GFP, including their use of force.

Video and audio recordings played an important role in the OIM’s review. The DPD produced over 200 hours of BWC video and 25 hours of footage recorded by the DPD’s helicopter (“Air One”) during the first five days of the GFP. The OIM analyzed all of this video footage, often multiple times. The DPD also gave the OIM temporary access to its HALO video system. With over 250 HALO cameras recording continuously, the OIM had access to more than 15,000 hours of potentially relevant video from the first five days. To make this review more manageable, OIM staff focused on particular locations and times that had the most significant protester and officer activity. The OIM obtained audio files for all police radio communications during the GFP and focused its radio review on the days and times with particularly high broadcast volume.

The OIM conducted dozens of interviews with DPD officers and command staff, community members, and personnel from other CCD agencies. This included interviews with Chief Paul Pazen, Deputy Chief Barb Archer, Division Chief Ron Thomas, the DPD Incident Commander, others in the DPD Command Post, lieutenants who managed the DPD’s downtown response, sergeants who led mobile response teams, and officers who worked on those teams and on static



skirmish lines. The OIM also interviewed personnel from the CCD's Office of Emergency Management and Technology Services.

As part of its review, the OIM read and analyzed a large quantity of academic research and best practice literature about law enforcement crowd control and the use of less-lethal munitions. This included research into the history of protest policing practices, evaluations of certain types of less-lethal munitions, and different tactical approaches to protests concerning police conduct. The best practices literature came, in part, from the United States Department of Justice Office of Community Oriented Policing Services ("COPS Office") and recognized law enforcement leaders, such as the International Association of Chiefs of Police ("IACP") and the Police Executive Research Forum ("PERF"). The OIM used these resources to establish a baseline of best practices to assess the DPD's responses to the GFP and to generate the recommendations in this report.

## Use of Force

The force used by officers during the GFP was the largest source of public controversy. Some community members shared their belief that much of the force was excessive or unnecessary. Others disagreed. To address these concerns and to enhance transparency, much of the OIM's review focused on the DPD's use of force policies, equipment, and practices.

## Policing Protests and Protesting Police

Policing large protests requires police departments to balance the legal commands of the First Amendment to respect the rights of protestors to assemble and be heard, with the need to maintain public order, defend property, and protect people from injury, if possible. The DPD has had successes in this arena, and during our review, frequently pointed to its accomplishments managing the many protests that occurred during the Democratic National Convention in Denver in 2008 as evidence.

While the DPD rightly points to its achievements of the past, many of those protests were different from the GFP in a fundamental way: they were not *about the criminal justice system or the police*. The challenges presented by policing mass protests are magnified exponentially when the demonstrations concern police conduct itself. Police must still balance First Amendment guarantees with the need to protect life and property, but they must do so under sustained criticism from protest participants. Recent research has demonstrated that, in general, police tend to respond to demonstrations about police brutality more aggressively than they do to protests with other messages, making arrests and using force at greater rates.<sup>10</sup>

Some of that response may be difficult to avoid. When a protest is about the police, officers may be insulted, threatened, or even targeted with thrown projectiles or other improvised weapons, as happened during the GFP. This behavior will naturally provoke a more forceful response from the police. Yet, protests about police conduct also pose a risk that officers will seek to punish protestors for speech that officers find offensive or objectionable.<sup>11</sup> Given that risk, we believe that police departments must implement tighter internal controls on the use of force during protests that are about police conduct. As set forth below, we do not believe that the DPD sufficiently met that challenge during the GFP.

## **OIM Information Requests and Documentation Gaps**

The OIM began its use of force review by promptly requesting documents and information from the DPD. This included the most recent versions of the DPD's Use of Force Policy and Crowd Management Manual. Specific to the first five days of the GFP, we requested operational plans and after-action reports; inventories of all equipment, munitions, and weapons deployed; rosters of assigned officers; documentation of all dispersal orders and uses of force, including use of force reports and officer statements; and all BWC, Air One helicopter, and HALO camera video footage.<sup>12</sup>

The DPD provided much of the requested information, but early on, it became clear that there were significant gaps in the documentation that was available. The DPD's after-action reports included some general information about when force was used, but they were often vague rather than specific, and they documented only a relatively small number of incidents. The DPD produced a pre-protest inventory of its less-lethal munitions but could not provide complete counts of the actual number of munitions deployed during the GFP.<sup>13</sup> Similarly, the DPD provided an officer roster for June 1, but admitted that similar rosters had not been created for the first four protest days.<sup>14</sup> The DPD produced Use of Force Statements written by officers that contained certain information about individual uses of force. But many of them were created almost two weeks after the incidents they documented, and they were often vague, which severely limited their evidentiary value. The DPD also produced a certain amount of BWC, Air One helicopter, and HALO footage but was unable to produce BWC video for many of the officers who policed the GFP. Notwithstanding these limitations, the OIM analyzed the documentation produced, and this section describes our resulting findings and recommendations.

## **Less-Lethal Equipment and Munitions Used During the GFP**

The DPD used a variety of types of less-lethal equipment and munitions during the GFP. Many officers carried pepperball or 40mm launchers. Others served as grenadiers with throwable chemical munitions. Below, we detail the primary types of less-lethal equipment and munitions used by the DPD during the GFP, as well as certain key policies that governed their use.

## Pepperball Launchers

Pepperball launchers are air-powered devices that deploy plastic sphere rounds containing either inert powder or pelargonic acid vanillylamide (“PAVA”) powder.<sup>15</sup> They fire the PAVA rounds at a velocity of 280–320 feet per second and the inert rounds at 280–350 feet per second.<sup>16</sup> PAVA powder is a chemical agent that can cause impaired breathing, skin inflammation, tightness and pain in the chest, involuntary eye closure, profuse tearing, secretion of excessive mucous, involuntary extension of ones hands to the face, and anaphylactic shock.<sup>17</sup> The manufacturer of the equipment used by the DPD, United Tactical Systems, cautions that pepperball launcher operators should “[n]ever aim or shoot at the head, face, eyes, ears, throat or spine. Impact in these areas could result in unintended severe or permanent injury or death.”<sup>18</sup>



Pepperball launchers have two primary methods of use:

- Area Saturation – Shot at the ground or other hard objects near subjects, causing the rounds to release a cloud that exposes subjects to PAVA powder. Used in this manner, pepperball launchers have an effective range of 0–150 feet.<sup>19</sup>
- Direct Fire – Shot directly at subjects, exposing them to the pain caused by the round’s impact and the effects of the chemical exposure. Impact can cause bruises, welts, and bleeding.<sup>20</sup> Used in this manner, pepperball launchers have an effective range of 0–60 feet.<sup>21</sup>



The DPD Use of Force Policy does not distinguish between the area saturation and direct fire methods of use. It authorizes officers to use pepperball launchers in response to defensive resistance, which in crowd control situations it defines as “physical actions by members of a crowd that constitute an unlawful assembly and/or disruption to pedestrian or vehicle traffic.”<sup>22</sup>

## 40mm Launchers

Single- or multi-round 40mm launchers fire 40mm rounds using a smokeless propellant.<sup>23</sup>

The rounds consist of a plastic body and a foam nose, and travel at a velocity of 295–325 feet per

second.<sup>24</sup> Some 40mm rounds also contain inert, marking, or oleoresin capsicum (“OC”) powder.<sup>25</sup> 40mm launchers are meant to be fired directly at individuals. They have a minimum safe range of 5 feet and a maximum effective distance of 120 feet.<sup>26</sup> Impact can cause bruising, swelling, lacerations, critical eye injuries, and skull fractures.<sup>27</sup> The manufacturer warns that 40mm launchers are “to be used only by trained law enforcement, corrections, and military personnel” and “[i]f used incorrectly, [40mm launchers] may cause serious injury or death.”<sup>28</sup>



The DPD Use of Force Policy authorizes officers to use 40mm launchers in response to active aggression, which it defines as an “overt act or threat of an assault, coupled with the present ability to carry out the action, which reasonably indicates that an assault or injury to a person is likely.”<sup>29</sup>



## OC Foggers

OC foggers are hand-held canisters that, when activated, emit OC aerosol, which is commonly referred to as “pepper spray.”<sup>30</sup> OC aerosol can cause a burning sensation of the skin and eyes, and inflammation of the mucous membranes in the breathing passages, temporarily restricting breathing to short, shallow breaths.<sup>31</sup> OC foggers have a minimum recommended distance of 6 feet and an effective range of 18–20 feet.<sup>32</sup> The DPD Use of Force Policy authorizes officers to use OC foggers in response to defensive resistance.<sup>33</sup>



## Gas and Smoke Grenades

Gas and smoke grenades are hand-thrown canisters containing pellets that emit either chlorobenzylidene malononitrile (“CS”) gas or inert smoke.<sup>34</sup> CS gas, commonly referred to as “tear gas,” can cause irritation, burning sensations, blisters, coughing, shortness of breath, and chest tightness.<sup>35</sup> Gas and smoke grenades are “to be used only by authorized and trained law enforcement, corrections, or military personnel” and “should not be deployed onto rooftops, in crawl spaces, or indoors due to [their] fire-producing capability.”<sup>36</sup> The manufacturer cautions that gas and smoke grenades “may cause serious injury or death.”<sup>37</sup> The DPD Use of Force Policy authorizes officers to use gas and smoke grenades in response to defensive resistance.<sup>38</sup>



## Rubber-Ball Grenades

Rubber-ball grenades (also known as “Sting-Ball” or “Stinger” grenades) are hand-thrown explosive devices that emit a bright flash and a 175 decibel noise, and project up to 180 rubber-balls in 360 degrees with up to a 50-foot radius.<sup>39</sup> The light and sound can disorient individuals and the rubber pellets cause physical pain.<sup>40</sup> Rubber-ball grenades can also contain OC powder that disperses into a cloud that causes irritation.<sup>41</sup> Neither the DPD Use of Force Policy nor its Crowd Management Manual include any discussion about the appropriate use of rubber-ball grenades.<sup>42</sup>



## Noise Flash Diversionary Devices

Noise flash diversionary devices (“NFDD”), commonly known as “flash bangs,” are hand-thrown explosive devices that emit a bright flash and a loud noise.<sup>43</sup> The light and sound are designed to disorient and can cause temporary blindness and deafness.<sup>44</sup>

NFDDs can cause serious injuries to the officers and the community members in the vicinity of their use.<sup>45</sup> The heat they release (up to 4,900 degrees Fahrenheit) can cause fires and severe burns.<sup>46</sup> As such, NFDDs are “not intended for the direct application of force against a person and should not be thrown directly at a person.”<sup>47</sup> Because of the potential hazards, NFDDs should only be deployed by officers who have received specialized training in their use.<sup>48</sup> Neither the DPD Use

of Force Policy nor its Crowd Management Manual include any discussion of the appropriate use of NFDDs.<sup>49</sup>

## **Internal Controls on the Use of Force by DPD Officers**

Mass-protest events are inherently chaotic, and supervisors are often stretched too thin to closely supervise the force being used by individual officers. To address this, police departments have developed a variety of internal controls to help regulate the way that force is used. This includes tracking the distribution and deployment of less-lethal munitions, creating officer rosters to track assigned personnel, and requiring officers to activate BWCs to record uses of force. It also includes the prompt preparation of use of force reports, issuing and recording orders for crowd dispersal, and ensuring that only certified officers may deploy certain less-lethal munitions, such as pepperball and 40mm launchers. There were significant gaps in the DPD's use of each of these internal controls during the GFP.

## **Less-Lethal Munitions**

The DPD ordered an extremely large quantity of multiple types of less-lethal munitions during the GFP's first five days. Given the chaos and violence on the street during that period, this may be unsurprising. Yet, the DPD did not effectively track this inventory during the protests.

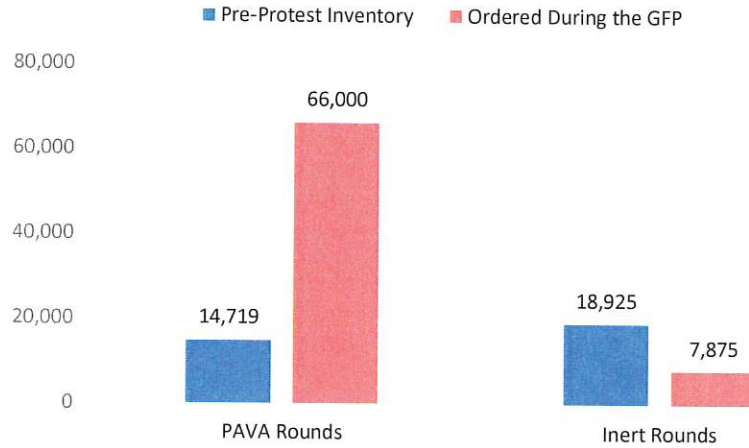
## **Pre-Protest Inventory and Purchases During the GFP**

At the start of the GFP, the DPD had more than 30,000 PAVA and inert pepperball rounds, 600 40mm rounds, 200 gas and smoke grenades, and 150 OC foggers in its existing inventory.<sup>50</sup> On May 28, a large number of officers deployed with less-lethal equipment, and hours after the protests had begun, DPD officers began reporting that they had exhausted their supplies of less-lethal munitions. For example, as early as 10:30 p.m., the Gang Unit and Metro/SWAT reported that they had depleted their supply of pepperball rounds and throwable munitions. This prompted CCD personnel to begin reaching out to the Aurora Police Department and Englewood Police Department to ask for resupply.

On the second day of the GFP, the DPD began purchasing additional munitions directly from its vendors while continuing to request resupply from neighboring jurisdictions. Specifically, between May 29 and June 1, the DPD ordered an additional 66,000 PAVA pepperball rounds, which was more than three times the

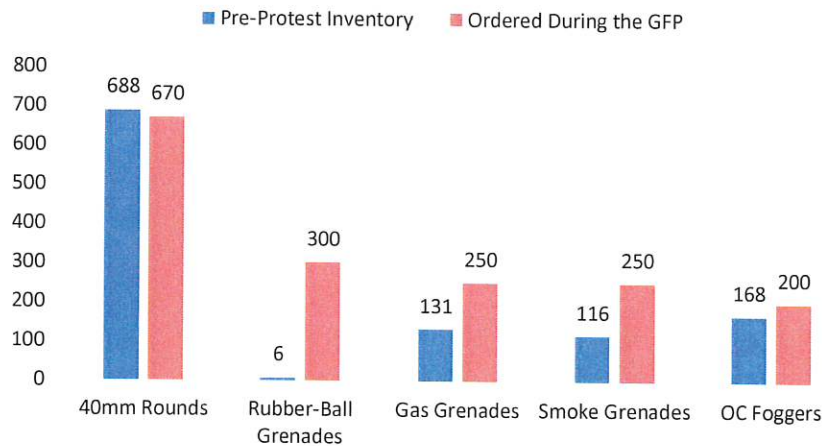
amount that it had in inventory at the start of the protests. It also ordered 7,875 inert pepperball rounds.

*Figure 1: Pre-Protest Inventory of PAVA and Inert Pepperball, and Orders During the GFP*



During that same time period, the DPD ordered an additional 670 40mm rounds, 300 rubber-ball grenades, 250 gas grenades, 250 smoke grenades, and 200 OC foggers.

*Figure 2: Pre-protest Inventory of Other Less-Lethal Munitions, and Orders During the GFP*





The total cost of the less-lethal munitions ordered by the DPD during the first five days was \$202,341.50. A specific breakdown appears below:

*Table 1: DPD Less-Lethal Munitions Orders, First Five Days of the GFP*

Date	Munition Type	Quantity	Cost Per Unit	Total Cost
5/29/2020	LiveX PepperBall 375 Count Containers	40 Containers of 375 PAVA Rounds	\$845.00	\$33,800.00
	40mm Exact Impact Sponge Rounds	70 40mm Rounds	\$19.75	\$1,382.50
	SpedeHeat CS Grenade	200 Gas Grenades	\$30.55	\$6,110.00
	MK9 OC Fogger	100 OC Foggers	\$36.72	\$3,672.00
5/31/2020	LiveX PepperBall 375 Count Containers	134 Containers of 375 PAVA Rounds	\$840.00	\$112,560.00
	Inert PepperBall 375 Count Containers	20 Containers of 375 Inert Rounds	\$235.00	\$4,700.00
	40mm Exact Impact Sponge Rounds	600 40mm Rounds	\$19.45	\$11,670.00
	Stinger Rubber-Ball OC Grenade	300 Rubber-Ball Grenades	\$45.35	\$13,605.00
	Triple Chaser CS Grenade	50 Gas Grenades	\$40.50	\$2,025.00
	SAF Smoke Grenade	250 Smoke Grenades	\$28.50	\$7,125.00
6/1/2020	LiveX PepperBall 375 Count Containers	2 Containers of 375 PAVA Rounds	\$875.00	\$1,750.00
	Inert PepperBall 375 Count Containers	1 Container of 375 Inert Rounds	\$270.00	\$270.00
	MK9 OC Fogger	100 OC Foggers	\$36.72	\$3,672.00
<b>Total</b>				<b>\$202,341.50</b>

Some of these munitions were picked up immediately and available to officers during the first five days of the GFP. This included a May 29 order of gas grenades and 40mm rounds that the Colorado State Patrol flew its plane to Wyoming to pick up for the DPD.<sup>51</sup> In interviews, DPD personnel also described receiving unknown amounts of less-lethal munitions from Mutual Aid Partners.

## Incomplete Tracking of Less-Lethal Munitions

The DPD did not effectively track its less-lethal munitions during the GFP. As munitions were exhausted and new supplies were obtained, they were generally distributed at each day's briefing to supervisors, who would then dispense them to the officers under their command. Yet, the DPD maintained no log of these munitions distributions, nor an accounting of the rate at which teams were expending them.

Effective tracking of less-lethal munitions is critical in protest management, as it helps to determine when new supplies must be ordered. It also enhances accountability, as tracking logs can be used to identify whether particular teams or squads are running through munitions at disproportionate rates, which can prompt supervisory investigation, review, or intervention.

Best practices state that police agencies should “develop a tracking system for all equipment as it is procured, assigned to officers, used in the field, and collected during demobilization.”<sup>52</sup> Some police departments require a particular unit to maintain a less-lethal munitions inventory log during crowd control events to track which munitions are checked out, how many are used, and by whom.<sup>53</sup> This kind of tracking allows “the department to maintain accountability of where equipment is, who is using it, and how it should be allocated.”<sup>54</sup> These logs can later be cross referenced with use of force reports to help ensure that officers are using less-lethal force consistent with policy, and to spot trends in the use of force that may require modifications to agency policy or training. The DPD has general procedures for inventory tracking but none specific to tracking less-lethal munitions during crowd control situations.<sup>55</sup>

Given the lack of tracking, the DPD is generally unable to account for the number of munitions deployed by individual teams or squads.<sup>56</sup> Nor is it able to account for the total amount of each type of munition deployed during the GFP.

## Officer Rosters

The staffing of the protests was also not effectively tracked during the GFP's first five days. Officer rosters are comprehensive lists of all officers who are assigned to work a particular detail or deployment. They generally list all assigned officers, the supervisors each reports to, and may also include information about each officer's particular skills and certifications, such as specialized trainings or less-lethal equipment certifications. Rosters help command staff make informed decisions

about the number of officers that must be assigned to effectively manage a large protest. National standards recommend that law enforcement agencies create rosters for crowd control events, and doing so is a common practice for many agencies.<sup>57</sup>

DPD policies are somewhat vague about officer rosters during large-scale protests. While the DPD Operations Manual suggests that they should be created, the DPD Crowd Management Manual is silent on the subject.<sup>58</sup> Despite this, the DPD has historically created officer rosters for large crowd control events.

During the first five days of the GFP, the DPD created only a single officer roster, for June 1, which was the fifth protest day. It lists each assigned officer with their rank and badge number, as well as information about certain certifications they held. It also shows a total count of all DPD officers assigned to the GFP on that day. However, rosters were not prepared for the first four days. On May 28, the DPD was caught by surprise by the size and scale of the protests and put out a citywide call for help, prompting many officers to respond. In the chaos that followed, it would have been extremely difficult to create a roster. Yet, we believe that rosters could have been created for the three days that followed, and they would have provided basic information for use in managing the protest response.

On several occasions during this review, we asked the DPD, or members of its command staff, for the number of officers who were assigned to work the GFP during its first four days. We got varying answers to that question, and none were authoritative. The DPD's after-action reports document a total number of officers who worked in Denver for each day, but they include *both* DPD officers and officers from other law enforcement agencies. They do not clarify how many DPD officers were assigned to the GFP each day. The DPD also provided an estimated number of DPD officers who worked each day, but a large number of officers who recorded BWC footage were not included in these counts, so they are also not reliable.<sup>59</sup> Rosters would have definitely shown this basic piece of information, which the DPD has otherwise been unable to definitively provide.

## Body Worn Cameras

Best practices emphasize the important role of BWCs during police crowd control and recommend that all uniformed officers use BWCs during such operations.<sup>60</sup> Gaps in the DPD's policies and practices, however, resulted in a substantial number of DPD officers recording no BWC footage during their assignments at the GFP.

BWCs “provide an opportunity to record verbal and physical exchanges between demonstrators and the police – protecting all parties from false accusations.”<sup>61</sup> “By documenting verbal and physical exchanges, as well as other evidence, BWC footage may assist with the prosecution of criminal cases or in the review of complaints against officers by community members.”<sup>62</sup> Utilization of BWCs improves transparency and accountability by providing video evidence that allows police agencies to exonerate officers who are falsely accused or to identify officers engaging in misconduct and take corrective action when force is used inappropriately.<sup>63</sup>

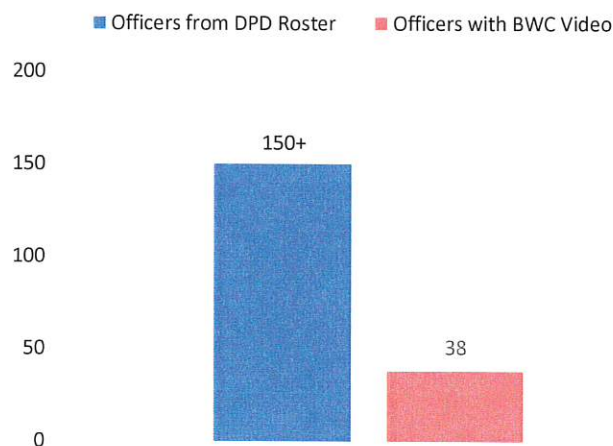
The DPD has utilized BWCs since 2015 and has adopted policies regarding which officers are required to use them, when they must be activated, and how officers are to upload the footage to the cloud.<sup>64</sup> BWCs must be worn by “[a]ll officers (sergeants and below in uniformed on-duty line assignments).”<sup>65</sup> This includes “sergeants, corporals, technicians, and patrol officers assigned to all six (6) police districts, Metro/SWAT, the Gang Unit, the Traffic Operations Section, and the Airport Police Bureau.”<sup>66, 67</sup> Officers are required to activate their BWCs during “any encounter that becomes adversarial” and in “any situation that the officer believes the use of the BWC would be appropriate or would provide valuable documentation if not already activated per policy.”<sup>68</sup> Immediately following an on-duty assignment, officers are required to upload BWC data by placing the BWC into a docking station.<sup>69</sup> BWC video footage is then retained in the Evidence.com database for storage.<sup>70</sup> DPD policy provides no specific guidance on BWC usage during crowd control operations.<sup>71</sup>

On June 12 the OIM requested access to Evidence.com.<sup>72</sup> Instead of providing direct access, on June 18 the DPD began sending the OIM links to download specific video files identified by the DPD as related to the GFP.<sup>73</sup> The DPD shared additional links on June 26 and again on July 16.<sup>74</sup> At that time, the DPD indicated that it had used “all plausible searching options to ensure we are doing the absolute best we can to provide you with every piece of evidence possible.”<sup>75</sup> On August 22, the OIM gave the DPD a list of officers who appeared to have worked the GFP but for whom we had received no BWC footage.<sup>76</sup> The OIM asked the DPD to search Evidence.com and confirm that there were no video files for these officers from the first five days of the GFP. On September 3, the DPD provided a final set of download links for additional BWC video that was identified in response to the OIM’s August 22 request.<sup>77</sup> In total, the DPD produced 1,218 BWC video files recorded during the first five days of the GFP.<sup>78</sup> These files included BWC recordings made by 226 officers, totaling 226 hours and 23 minutes of footage.

## The “Footage Gap”

The OIM analyzed this footage to identify patterns in how force was used and to determine the rate at which officers activated their BWCs. Ideally, we would have compared officer rosters from each of the first five days with the names of officers who recorded BWC footage. As already discussed, however, rosters were not prepared for May 28 through May 31.<sup>79</sup> As such, the OIM focused on June 1, the only day for which a roster was created. On June 1, approximately 150–200 DPD officers were assigned to the GFP, but the DPD produced BWC video from only 38 DPD officers.

*Figure 3: Number of DPD Officers Assigned to the GFP and the Number with BWC Video, June 1*



Thus, there were at least 112 DPD officers who worked the GFP on June 1 for whom no footage could be produced. This is despite the fact DPD officers made 124 arrests on June 1, including arrests for curfew violations, carrying a concealed weapon, burglary, and felony menacing, among other charges. The DPD’s BWC policy notes that a core purpose of BWCs is “to capture crimes in-progress.”<sup>80</sup> That same policy requires that “all arrests and/or citations” must be recorded on BWC.<sup>81</sup> We are aware of no reason why more of these 124 arrests were not recorded, as policy required.

A similar comparison is difficult for the first four days of the GFP. DPD estimated the number of its officers who worked at the protests on those days but, as described above, we believe that this method undercounts the number of officers who were present. But even using these numbers, a large number of officers had no footage

recorded. For example, the DPD estimates that 150–200 DPD officers worked on May 30, the third day of the GFP, yet it produced BWC video for just 75 DPD officers. This leaves at least 75 officers for whom the DPD could produce no BWC video.

There may be several reasons for these footage gaps. As discussed above, there was no specific guidance about BWC usage during crowd control situations in DPD policy and no discussion of BWC activation in the Crowd Management Manual. This may have created confusion for officers about whether to activate their BWCs during the chaos of the protests and, if so, when. Additionally, during interviews, the OIM learned that some officers were unable to attach their BWCs to their protective gear (which is often referred to as “turtle suits” or “riot gear”). While the DPD subsequently acquired new equipment to better affix the BWCs, this prevented an unknown number of officers from attaching their cameras during the GFP. In addition, some officers may have failed to activate their cameras for other, unknown reasons.

Part of the gap can be explained by the fact that the DPD BWC Policy did not require all detectives, lieutenants, captains, commanders or chiefs to use BWCs.<sup>82</sup> Personnel who hold these ranks were thus generally without BWCs during the GFP.<sup>83</sup> The extent of this issue is difficult to determine for the first four days of the protests, but the June 1 roster provides some information. It indicates that approximately 28% of those assigned to the GFP on that day were commanders, captains, lieutenants, and detectives.

## **Delayed/Vague Officer Statements About Uses of Force**

National standards emphasize the importance of documenting uses of force during large protests to enhance accountability. The DPD did require officers to prepare use of force reports for the GFP, but they were significantly delayed and often very vague, which limited their evidentiary value.

The IACP recommends that all uses of force during crowd control be reported consistent with agencies’ normal force reporting policies.<sup>84</sup> All use of force reports should be as comprehensive as practicable and provide the degree of specificity necessary to fully document and evaluate the force.<sup>85</sup> Incomplete, vague, or boilerplate language in use of force reports could allow violations to go unchecked and cripples investigations, so this type of language should not be permitted.<sup>86</sup>

The DPD Operations Manual requires that all uses of force must be documented in a Use of Force Report.<sup>87, 88</sup> The report must include, among other things, a

description of the incident and a detailed recounting of the officer's actions and observations.<sup>89</sup> During day-to-day policework, uses of force are reviewed by a supervisor in the officer's chain of command.<sup>90</sup> The supervisor will gather evidence from the field, such as video footage and statements from all witnesses, in order to determine whether or not additional investigation by the DPD Internal Affairs Bureau ("IAB") is required.<sup>91</sup>

The DPD Crowd Management Manual is silent on use of force reporting requirements specific to crowd control situations.<sup>92</sup> In response to a lawsuit that was filed on June 4, DPD personnel attempted to review when and where DPD officers had deployed chemical munitions against protesters. This proved problematic because Use of Force Reports had not been routinely prepared. Starting on June 6, command staff asked officers to go back and document their uses of force from the beginning of the GFP. Many officers attempted to comply by providing a description of the force they used in an Officer Statement (hereafter "Use of Force Statement") rather than completing the standard Use of Force Report. Many of these Use of Force Statements were prepared 12 or more days after the use of force incidents that they documented. In response to OIM document requests, the DPD produced more than 400 Use of Force Statements from officers assigned to the Citywide Impact Team, Districts 1 through 6, the Gang Unit, Metro/SWAT, and Traffic Operations.

The lack of timely reporting about use of force significantly complicated our attempts to evaluate how, when, and where force was used during the GFP. Further, during our analysis of the Use of Force Statements produced by the DPD, we identified three common issues: 1) many included short and vague descriptions of the circumstances surrounding uses of force and few included the amount of detail required by policy; 2) some officers repeated narratives verbatim for each day they worked, changing only the date; and 3) some officers reported feeling uncomfortable detailing events that were so far in the past given the chaos of the GFP. These issues seriously limited the utility of these statements in evaluating individual uses of force to determine whether or not they were compliant with DPD policy.

## **Inconsistent Documentation of Crowd Dispersal Orders**

Another issue was the DPD's compliance with its policies on crowd dispersal orders. Under existing law, police may not seek to disperse protests "because they simply fear possible disorder."<sup>93</sup> In certain circumstances, however, when disorder or violence are pervasive in a crowd, the police may seek to forcibly disperse it.

Dispersal orders, which warn that force and arrest are likely if people do not disperse, may help to limit the number of people who are exposed to less-lethal munitions. Recording and documenting these orders helps to ensure that they are being regularly given. Although DPD policy requires the DPD to record dispersal orders and document them in writing, DPD's compliance with this requirement during the first five days of the GFP was inconsistent at best.

Under national standards, dialogue and other non-force alternatives should be considered before ordering a crowd's forced dispersal.<sup>94</sup> If containment and dialogue are ineffective, warnings should be given before less-lethal munitions are used, if time and circumstances permit.<sup>95</sup> The warnings should consist of an announcement citing the offenses or violations being committed, an order to disperse, and designated dispersal routes.<sup>96</sup> Clear orders may be effective at thinning a crowd before its members are subjected to less-lethal munitions. To allow for compliance, multiple warnings should be issued at reasonable time intervals before deploying less-lethal munitions.<sup>97</sup>

The guidance provided by the DPD Crowd Management Manual is largely consistent with these national standards. It provides that the decision to declare an unlawful assembly will be made by the Incident Commander.<sup>98</sup> Unless there is an imminent threat of "personal injury or significant damage to property," dispersal orders should be given and "repeated at least three times, and if possible, from a variety of locations."<sup>99</sup> The orders must include dispersal route information and warnings that the refusal to comply shall subject participants to force and arrest.<sup>100</sup> Only when voluntary compliance has not been obtained, may dispersal tactics, such as the use of chemical agents and other less-lethal munitions, be used.<sup>101</sup>

Specific guidance about documenting dispersal orders can be found in the DPD Crowd Management Manual and operational plans from the GFP. The DPD Crowd Management Manual states that dispersal orders "should be videotaped or tape-recorded if possible" and if time and circumstances permit, "an officer should be posted on the far side of the crowd to tape record the order."<sup>102</sup> Operational plans from the GFP echo this guidance, noting that the "command officer that gives the dispersal order is required to write a statement" and that all warnings will be videotaped.<sup>103</sup>

Records indicate that the DPD did not routinely document dispersal orders during the first five days of the GFP, as both policy and the operations plans required. The OIM requested written documentation of all dispersal orders and was told by DPD personnel that "[w]e can not locate any written statements that contain this information."<sup>104</sup> The DPD's after-action reports from the first two days of the GFP



do not include any information related to dispersal orders. Beginning on May 30, the day that the curfew was implemented, the after-action reports document announcements that were made before the curfew went into effect, but no general dispersal orders.

The DPD also did not consistently audio or video record dispersal orders. Rather than use videographers to record them, as was the DPD's practice during previous mass protests, the DPD largely depended on BWCs. Yet lieutenants were generally responsible for issuing dispersal orders, and prior to the temporary restraining order issued on June 5, lieutenants were not generally equipped with BWCs.<sup>105</sup> As a result, dispersal orders issued by lieutenants were generally recorded only if they were captured on another officer's BWC by chance.

## **Crowd Dispersal Without Dispersal Orders**

Our video review showed that the DPD also did not consistently issue dispersal orders before using force to disperse crowds. Community members who we spoke with during this review reported that they heard only sporadic dispersal orders. More often, they reported being subjected to less-lethal munitions before hearing any warning or order. In contrast, DPD officers indicated they did issue dispersal orders prior to deploying less-lethal munitions to disperse crowds, except in exigent circumstances. Officers described being struck by rocks and other projectiles thrown by protesters, and some stated that BWC footage often failed to fully capture the assaultive behavior of certain members of the crowd.

The video footage that we reviewed from the first five days of the GFP did demonstrate that officers were sometimes targeted with thrown projectiles, including rocks and other dangerous weapons. Yet, it also revealed that the DPD did not routinely comply with its policies on issuing orders to disperse. We reviewed hundreds of hours of video footage and observed dozens of situations in which the DPD used less-lethal munitions to disperse crowds. We heard orders to disperse in only a minority of those situations. In most, the available video did not show any exigency that required the application of less-lethal munitions without orders to disperse.

Even when DPD did issue dispersal orders, the orders that we heard sometimes did not comply with DPD policy. They sometimes lacked information about dispersal routes and did not warn protesters that by remaining, they would be subjected to force and arrest. Often, we did not see officers allowing enough time and space for protesters to comply even if they wanted to. This created the risk that some

protesters who might have voluntarily complied were unnecessarily exposed to less-lethal munitions alongside those engaging in unlawful and dangerous behavior.

## Visibility of Officer Identification on Riot Gear

Even in the midst of chaotic crowd control situations, the “public has a right to expect accountability during an encounter with law enforcement, and accountability includes having a means for citizens to identify officers.”<sup>106</sup> Recent IAB investigations, as well as our analysis of video during this review, demonstrate that officer identification was also a problem during the GFP.

Best practices recommend that “[o]fficers assigned to duties at demonstrations and disturbances should wear their badges, nameplates, or other personal identification on the outside of their uniforms or on their helmets at all times.”<sup>107</sup> The IACP Crowd Management Model Policy requires that “[u]niformed personnel shall wear their badges and nameplates or other identification in a visible location on their person at all times.”<sup>108</sup> The PERF recommends annual training that addresses, among other things, “rules regarding maintaining visibility of officers’ badge numbers when donning civil disturbance equipment and other means of identification.”<sup>109</sup>

The DPD Operations Manual, Crowd Management Manual, and training documents offer varying guidance about how officer badges and badge numbers are to be displayed. The Uniforms and Equipment Policy states that a “badge will be worn on the uniform shirt attached to the badge holder or on the outermost garment to be clearly visible at all times” and that the “badge will designate the appointed position or civil service rank and the officer’s serial number.”<sup>110</sup> When listing the typical equipment to be worn in crowd control situations, the DPD Crowd Management Manual describes protective gear for the chest that is “marked with agency & badge number designations.”<sup>111</sup> Presentation slides from a DPD crowd control refresher training do not address requirements to wear identifying information when discussing identification issues during crowd control situations.<sup>112</sup>

Recent investigations into misconduct complaints demonstrate the importance of this guidance. As previously discussed, the DPD opened more than 100 investigations into complaints alleging misconduct by DPD officers during the GFP. Although many of those investigations were not completed at the time of this report, of the 56 complaints closed, 20 were declined for further investigation and review due, in part, to an inability to identify the subject officer. That is, the

complainant did not provide the officer's identifying information in the complaint, and the investigation did not reveal it either. These declined complaints contained potentially serious allegations, such as officers firing pepperball rounds into a car of people trying to leave the GFP or unnecessarily throwing an NFDD into the yard of a private residence. It would be far better to resolve such complaints on the merits of the available evidence rather than declining them because the involved officers could not be identified.

BWC footage reviewed by the OIM also suggested that difficulties in identifying officers might have unnecessarily escalated certain interactions during the GFP. The OIM viewed footage in which officers lacked easily visible identifying information, community members asked for it, and the officers provided it without issue. In others, the lack of visible identifying information appeared to escalate already contentious situations as people confronted officers for not wearing badges or having visible badge numbers.

## **Use of Pepperball and 40mm Launchers by Uncertified Officers**

We also evaluated the DPD's compliance with its policies that limit the use of certain less-lethal equipment to officers who were certified to deploy them. Less-lethal tools can be effective when they are used in appropriate circumstances and in accordance with policy. When used improperly, however, they can also be quite dangerous. For example, these systems each have an effective range in which they can target with reasonable precision, and beyond which the risk of striking an unintended target increases. In addition, there are certain vulnerable body parts that must not be targeted.

Police departments generally manage these risks by ensuring that only officers who are certified and trained may deploy these weapons. For example, the IACP's Model Crowd Management Policy requires that "[i]n all cases, weapons should be carried and deployed only by trained and authorized officers," including impact projectiles and chemical munitions.<sup>113</sup> Manufacturers agree. In its pepperball launcher user manual, United Tactical Systems states that an officer must be "fully trained" on pepperball launchers before being allowed to use them.<sup>114</sup> The manufacturers of 40mm launchers share similar requirements.<sup>115</sup>

Consistent with these standards, the DPD's Use of Force Policy states that "[o]nly authorized users will display, carry, or deploy a PepperBall® system or 40 mm launcher." To become an authorized or certified user, officers "must successfully

complete designated instruction and periodic qualification conducted by authorized less-lethal instructors.”<sup>116</sup> Training documents indicate that the instruction for pepperball and 40mm launchers are each four hours long.<sup>117</sup> To attain certification, officers must pass both a written exam and practical qualification.<sup>118</sup> They can only seek certification with approval from their commanding officer and division chief.<sup>119</sup>

The OIM requested a list of all DPD officers who were authorized to use pepperball and 40mm launchers before the GFP. In response, the DPD produced a Master list of all officers who had attained these certifications (“Certified Officer List”). The Certified Officer List included over 500 DPD officers with assignments in all patrol districts and several specialized units. Many officers had achieved certifications in both pepperball and 40mm, though some were only certified on one of the launchers.

The OIM analyzed the Use of Force Statements produced by the DPD and found that there were five officers who stated that they were given “training” on the pepperball or 40mm when they arrived to the GFP. For example, one officer indicated that on May 30, “upon arrival to the meeting point near the Capitol Building, I was given training for the Pepper Ball launcher due to the emergency situation, and as we did not have enough Officers who had the certification.” Other officers also stated that they were given “emergency field training” when they began working at the GFP. All of these officers deployed pepperballs or 40mm rounds during the GFP, and none was on the Certified Officer List. The OIM also identified other instances in which officers stated that they had used pepperball or 40mm during the first five days of the GFP, but they did not appear on the Certified Officer List.

## **Conclusions and Recommendations Regarding Internal Controls on the Use of Force**

A key goal of our review was to perform, among other things, “an in-depth analysis” of the DPD’s use of force at the GFP.<sup>120</sup> To achieve that, we sought to analyze DPD records to determine what force was used at the GFP, when, by whom, and for what purpose. Much of the necessary information for that analysis was simply not collected by the DPD. The untracked munitions, the lack of officer rosters, the BWC footage gaps, the untimely and often vague Use of Force Statements, and the gaps in recording dispersal orders were an obstacle to our full after-the-fact analysis of the DPD’s uses of force during the protests.

Yet, their absence points to an even bigger problem. We believe that a number of the internal controls on use of force discussed above could have played a role in command review of force *while* events were unfolding. That is, command personnel could have reviewed tracking logs to determine whether certain teams or officers were exhausting supplies of munitions at disproportionate rates, they could have reviewed contemporaneous Use of Force Statements to determine whether force was being used in conformity with policy, and they could have analyzed Evidence.com to ascertain whether or not officers were activating their BWCs. We recognize that the GFP was extremely chaotic, and command personnel had their hands full—and then some. Even taking this into account, we view the deficient internal controls as a missed opportunity for greater managerial oversight of use of force during the GFP, which we strongly encourage the DPD to learn from for future protest events. Therefore:

- 1) *The OIM recommends that the DPD amend its Operations and Crowd Management Manuals to require the creation of a log or tracking system for the distribution and deployment of all less-lethal munitions during crowd control events.*
- 2) *The OIM recommends that the DPD amend its Crowd Management Manual to require the creation of rosters of all officers who are assigned to crowd control events, and that the DPD ensure that such rosters are created in the future.*
- 3) *The OIM recommends that the DPD amend its Operations and Crowd Management Manuals to require that all sworn personnel working in the field during protest operations be required to wear BWCs, regardless of rank. Further, the OIM recommends that protest operations plans assign a supervisor to conduct regular spot check comparisons between rosters and the BWC database to identify any gaps in officer recording that must be addressed.*
- 4) *The OIM recommends that the DPD amend its Operations and Crowd Management Manuals to detail the specific requirements for use of force reporting and review during crowd control operations. The OIM also recommends that the DPD ensure that Use of Force Reports are promptly created by officers and reviewed by supervisors and LAB during future crowd control events to identify possible divergences from the Use of Force Policy.*
- 5) *The OIM recommends that during future protest events, the DPD ensure that its supervisors routinely issue multiple dispersal orders before using force to disperse crowds, when time and circumstances permit.*

- 6) *The OIM recommends that the DPD ensure that crowd dispersal orders are consistently audio or video recorded and documented in writing during future crowd control events.*
- 7) *The OIM recommends that the DPD ensure that all officers have their badges and badge numbers prominently displayed and easily visible on the exterior of their uniforms or protective gear at all times during future crowd control events. The OIM also recommends that supervisors should be required to verify compliance for each member of the teams under their command.*
- 8) *The OIM recommends that the DPD ensure that only officers who have been trained and certified on the use of pepperball and 40mm launchers be permitted to use them during future crowd control events. The OIM also recommends that the DPD amend its Crowd Management Manual to specify that only authorized officers will be allowed to use pepperball and 40mm launchers during crowd control operations.*
- 9) *To enhance transparency, the OIM recommends that the DPD evaluate how to most effectively operationalize each of the internal controls on the use of force discussed in this report, and report back to the public with an explanation of how they will be employed during future protests.*

## **Substantive Use of Force Issues and DPD Policy**

In addition to the internal controls, we also sought to evaluate the DPD's uses of force themselves, as well as the relevant policies and procedures under which force was used. During our review, some community members expressed the belief that the DPD relied too heavily on less-lethal equipment and munitions or used tactics that exacerbated conflicts and led to more uses of force than would have otherwise been necessary. Others pointed to the large number of DPD officer injuries, the significant property damage in Denver, and the prolonged and dangerous protests in other cities as evidence that the force used by the DPD was largely necessary. Given the documentary gaps discussed above, it was impossible for the OIM to evaluate these competing claims or to resolve them with this report. Yet, through our review of hundreds of hours of video footage, all available documents, and interviews with police officers and community members, we identified a number of issues regarding specific uses of force and DPD's Use of Force Policy that we discuss below.

## Uses of Force Referred for Review and Possible Investigation

There were legitimate uses of chemical and impact munitions during the GFP. This included the targeting of specific individuals who were throwing rocks or other dangerous weapons at police officers or others. The DPD reported 81 officer injuries during the GFP, some serious, which speaks to the violent behavior of certain individuals within GFP crowds. Yet, during our review, we also saw examples of DPD officers deploying less-lethal munitions in ways that were extremely troubling. We observed DPD officers:

- Deploying OC spray or pepperball rounds at persons who were verbally objecting to police behavior and not engaged in apparent physical resistance.
- Deploying pepperball rounds and other projectiles that nearly or directly impacted prohibited areas of the body, including the head, face, and groin area.
- Continuing to deploy chemical, gas, impact, or explosive munitions after their use had already caused people to disperse and leave an area.
- Throwing explosive devices at or extremely close to individuals, sometimes resulting in people being knocked to the ground with apparent injuries.
- Deploying OC spray at drivers or throwable munitions into lanes of traffic in ways that may have interfered with the ability of drivers to safely operate motor vehicles.

As discussed above, over 100 investigations were opened by the DPD's IAB into complaints filed with the OIM, DPD, City Council, and Executive Director of Safety. Many of those investigations remain open to this day. As a result of this review, we also referred 24 additional BWC videos to the DPD for review and investigation.<sup>121</sup> Some of these videos are different angles on the same incidents. Given that investigations may be opened into some of these videos, we will not comment on their particulars in this report more than what we have said above. We will, however, update the public on these videos and the results of any investigations in future OIM reports.

## Policy Deficiencies for Less-Lethal Equipment and Munitions

Best practices recommend establishing clear guidelines on the use of less-lethal equipment and munitions. For example, the IACP Crowd Management Model Policy proposes clear limitations on the use of certain less-lethal munitions at mass

protest events.<sup>122</sup> While the DPD incorporates some of this guidance in its policies on certain less-lethal equipment and munitions, the OIM identified several areas of concern.

## No Guidance for High-Risk Explosive Devices

DPD policy provides no guidance for the appropriate use of rubber-ball grenades and NFDDs, which are both high-risk explosive devices. The Use of Force Policy and Crowd Management Manual are silent on the topic, and nothing in the training documents the OIM reviewed indicates that the DPD has articulated a clear standard for the use of these devices or permits only specialized officers in tactical units to deploy them.<sup>123</sup>

### Rubber-Ball Grenades

DPD officers used rubber-ball grenades during the first five days of the GFP though, as described above, the specific number used is unknown. Rubber-ball grenades are hand-thrown explosive devices that, when detonated, explode 8 grams of flash powder to propel up to 180 rubber-balls in 360 degrees as far as 50 feet.<sup>124</sup> They also emit a bright flash and an approximately 175-decibel noise.<sup>125</sup> When exploding outwards, the rubber balls cause physical pain and sometimes serious injury, and the light and sound from the blast can be extremely disorienting.<sup>126</sup> The DPD's vendor, Defense Technology, describes their tactical use as follows:

Applications in tactical deployment situations include high-risk warrant service, hostage rescue, and the arrest of potentially violent subjects. The purpose of the [rubber-ball grenade] is to minimize the risks to all parties through pain compliance, temporary distraction or disorientation of potentially violent or dangerous subjects.<sup>127</sup>

In interviews, DPD personnel described the utility of rubber-ball grenades in risky tactical situations, such as incapacitating potentially armed barricaded subjects. Within the DPD, such uses would generally be handled by officers in specialized, tactical units.<sup>128</sup>



Because the rubber balls explode outward in 360 degrees, the United States Department of Justice COPS Office explains that rubber-ball grenades “cannot be targeted at a single individual.”<sup>129</sup> In an evaluation of rubber-ball grenades, researchers found that they bounce unpredictably in a “similar fashion to a child’s ‘crazy ball’” and that not only do the rubber balls become projectiles but “the entire body of the grenade has the possibility of becoming shrapnel.”<sup>130</sup> Through repeated testing, they determined that upon detonation, the grenade body sometimes disintegrates, “creating a shower of shrapnel.”<sup>131</sup> Researchers specifically found that:

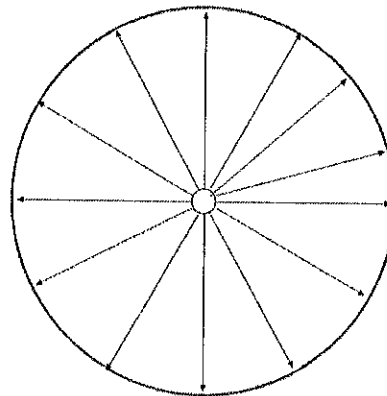


Figure from “An Exploratory Study of Stingball Grenades” by Charlie Melosh, et al. demonstrating the 360-degree projection of rubber balls.

[U]nlike other less lethal weapons that target “safe” zones of the body, the trajectory of the [rubber-ball grenade] fragments cannot be controlled by the user and could potentially strike unintended portions of the target’s body. This creates a concern for eye safety and soft tissue damage, and the potential that the projectiles may become lethal.<sup>132</sup>

Perhaps unsurprisingly, the manufacturer warns that rubber-ball grenades can result in serious bodily injury and should only be deployed by officers who have received specialized training.<sup>133</sup> The manufacturer recommends that in crowd management situations, rubber-ball grenades should be “generally reserved as a last selection when chemical agents and less-lethal impact munitions have not resolved the disorder or routed the crowd.”<sup>134</sup>

As discussed above, the DPD did not routinely track its less-lethal munition inventory during the GFP. However, purchase invoices show that the DPD ordered 300 new rubber-ball grenades on May 31, the fourth protest day. Further, DPD officers can be seen using rubber-ball grenades in certain BWC videos reviewed by the OIM. Several officers also described deploying rubber-ball grenades in their Use of Force Statements, and not all were assigned to highly-trained tactical units with specialized training.<sup>135</sup>

Fundamentally, we believe that rubber-ball grenades, which risk striking peaceful and aggressive individuals alike, are inappropriate for crowd control under all but the most extreme circumstances. We believe that these devices are best used only

for high-risk tactical applications. If they are to be used during crowd control, it is incumbent on the DPD to regulate their use with clear and explicit policy, which it did not do before the GFP.

#### Noise Flash Diversionary Devices

As discussed above, NFDDs, commonly known as “flash bangs,” are hand-thrown explosive devices that emit a bright flash and a loud noise.<sup>136</sup> The light and sound are designed to distract and disorient, and may cause temporary blindness and deafness.<sup>137</sup> When facing armed, barricaded suspects in felony crimes, NFDDs “can enable officers to make a dynamic entry into a home or business in a manner that can put the suspects off guard or give them something to have to deal with that can divert them from directly confronting officers.”<sup>138</sup> Within the DPD, NFDDs would typically be handled in such circumstances by officers in specialized, tactical units.<sup>139</sup>

NFDDs can cause serious injuries to the officers and community members in the vicinity of their use.<sup>140</sup> The heat they release (up to 4,900 degrees Fahrenheit) can cause fires and severely burn those who come in contact.<sup>141</sup> As such, NFDDs are “not intended for the direct application of force against a person and should not be thrown directly at a person.”<sup>142</sup> Because of the risks they pose, NFDDs should only be deployed by officers who have received specialized training in their use.<sup>143</sup>

While the pre-protest inventory documents and purchase orders that were produced to us did not include any information about NFDDs, DPD officers used them during the first five days of the GFP. In interviews, DPD personnel stated that NFDDs were used, in part, when officers ran out of other munitions. The Metro/SWAT Unit indicated that its officers deployed seven NFDDs. Written officer statements described several uses of NFDDs to disperse groups.

During our review of BWC video from the GFP, we identified a number of instances in which explosive devices that we believe to be NFDDs were used by DPD officers in ways that we found extremely concerning. We have referred these to the DPD for review and investigation. More broadly, we found the lack of specific policy guidance about the appropriate use of NFDDs—and limitations on their use during crowd control—also concerning.

## Inappropriate Standard for Direct-Fired Pepperball

Police departments generally use impact and chemical munitions during crowd control operations for distinct purposes. Police can use impact projectiles to strike specific individuals in a crowd who are attacking officers or other community members or are causing serious property damage.<sup>144</sup> These are deployments against specific persons, rather than entire crowds. In contrast, police may use chemical munitions, in several forms, to disperse crowds and force people to clear a particular area.<sup>145</sup> We believe that the DPD's policies for the use of pepperball do not appropriately distinguish between these kinds of uses.

Chemical munitions and impact projectiles present different kinds of risks. Chemical munitions are largely irritants. They make people uncomfortable; they cause temporary pain and distress, but with time, distance, and appropriate treatment, people generally recover, and there is little risk of long-term injury.<sup>146</sup> Impact projectiles, on the other hand, can bruise and sometimes cause long-term damage. When they strike sensitive areas like the face, eyes, small bones, and even certain areas of the body where internal organs are unprotected, they can break bones, cause disfiguring injury, and even result in death.<sup>147</sup> National standards recognize the varying risks posed by chemical and impact munitions and suggest tighter restrictions for direct-fired impact projectiles. For example, the IACP notes that direct-fired impact munitions should only be used "against specific individuals who are engaged in conduct that poses an immediate threat of death or serious injury or significant levels of property damage. A verbal warning should be given prior to the use of impact munitions when reasonably possible."<sup>148</sup>

Pepperball is a hybrid of a chemical munition and an impact projectile. It can be used in two ways: area saturation and direct fire. When used for area saturation, pepperballs are shot at the ground or other hard surfaces, causing the rounds to release a cloud of the chemical agent near a person or persons. When direct fired, the rounds are shot directly at subjects, exposing them to both the pain of impact and the effects of chemical exposure. During area saturation, pepperball functions as a chemical munition; when direct fired, it is both a chemical munition and an impact projectile. During our review of hundreds of hours of BWC video from the GFP, we identified many examples of pepperball being used in both ways by DPD officers. Often, the pepperball was fired at the ground or against hard objects near protesters to release the chemical irritant and move protesters from one location to another. We also often saw it used to target specific individuals by striking them directly.

Notwithstanding pepperball's hybridity, the DPD has a single standard for its use: defensive resistance.<sup>149</sup> The DPD Use of Force Policy defines defensive resistance in crowd control situations as "physical actions by members of a crowd that constitute an unlawful assembly and/or disruption to pedestrian or vehicle traffic."<sup>150, 151</sup> This means that an officer may strike a person directly with pepperball in response to nothing more than disrupting traffic. We believe that this standard is too low for direct-fired pepperball use. We believe that striking someone directly with an impact projectile that could cause them serious harm during crowd control should be reserved for situations in which individuals are engaging in no less than active aggression, defined as "an overt act or threat of an assault, coupled with the present ability to carry out the action, which reasonably indicates that an assault or injury to a person is likely."<sup>152</sup>

## Conclusions and Recommendations Regarding Substantive Use of Force Issues and DPD Policy

Given the documentary gaps discussed above, it was not possible for us to conclusively resolve the competing claims about the DPD's use of force during the GFP. However, our review did reveal a number of issues regarding specific uses of force and the DPD's use of force policies and practices. Therefore:

- 10) *The OIM recommends that the DPD disallow the use of rubber-ball grenades during crowd control operations. The OIM further recommends that the DPD articulate clear and specific standards for when rubber-ball grenades may be used, by whom, and when their use is prohibited in its Operations Manual.*
- 11) *The OIM recommends that the DPD articulate clear and specific standards for when NFDDs may be used, by whom, and when they are prohibited in its Operations Manual.*
- 12) *The OIM recommends that the DPD revise its standards for pepperball use during crowd control situations to limit direct-fired applications to only circumstances in which a person is displaying active aggression or aggravated active aggression.*



## Mutual Aid

Mutual aid was a critical component of the DPD's approach to the GFP. Responding to large-scale emergencies sometimes requires more officers than a law enforcement agency can easily muster from its own ranks.<sup>153</sup> Colorado law recognizes that under such circumstances, jurisdictions should help one another, to the extent possible, by sharing personnel, equipment, and other resources until the emergency has ended.<sup>154</sup> These arrangements, known as "mutual aid" arrangements, are a feature of many neighboring jurisdictions, and requests for mutual aid are common in response to mass protests.<sup>155</sup>

On May 28, the first night of the GFP, the DPD began reaching out to neighboring law enforcement agencies for support. At least two outside agencies responded that night to provide less-lethal munitions resupply. By the third night, many outside agencies were providing assistance in Denver. Throughout the GFP, 18 different Mutual Aid Partners were involved in policing protests in Denver. The Denver Sheriff Department also assisted. Most agencies sent "tactical teams" commonly known as "SWAT teams," which were used for mobile response throughout the downtown area.

While mutual aid provides many obvious benefits to a host jurisdiction, it also presents serious risks. Officers from partner agencies may be trained differently than officers from the host city, and they may have different expectations about when force can be used—and when it may not be.<sup>156</sup> They may also be equipped with less-lethal tools that are not approved for use in the host city.<sup>157</sup> Partner agencies may also have radio systems that are not compatible with their host, and they operate under their own unique command structures.<sup>158</sup> Inviting their aid thus also necessarily invites risks of confusion and increased chaos during an already tense, unfolding emergency.

To minimize these dangers, best practices call for neighboring jurisdictions to have comprehensive agreements that establish the ground rules for mutual aid.<sup>159</sup> These agreements should define who can request assistance under what circumstances, and specify the forms of aid to be provided and a centralized command structure for all responding agencies.<sup>160</sup> During our review, we requested that the DPD produce copies of all of its mutual aid agreements with any of the regional law enforcement agencies that provided assistance during the GFP.<sup>161</sup> We also requested documentation of the support that each provided, including the vehicles, equipment, munitions, and weapons used, as well as rosters of all officers they deployed. The DPD produced the documents in its possession, which included

some but not all of the requested information.<sup>162</sup> From our review of these materials, we identified serious gaps in the mutual aid framework used by the DPD, which we discuss in detail below.

## **The DPD was Unable to Produce Relevant Mutual Aid Agreements**

The development of written agreements between neighboring law enforcement jurisdictions is a crucial step in preparing for possible large-scale protests.<sup>163</sup> The IACP and the PERF, which establish best practices, recommend that nearly all law enforcement agencies enter into formal mutual aid agreements with their neighboring jurisdictions.<sup>164</sup> Law enforcement agencies “should be party to established multijurisdictional agreements or mutual aid plans,”<sup>165</sup> which should be developed well in advance of any mutual aid deployment.<sup>166</sup> These agreements should be specific about the ways that agencies will work together.<sup>167</sup> They should address “how officers from neighboring jurisdictions will deploy, how they will be used, what rules of engagement will be followed, and what guiding philosophy will inform their joint response to a mass demonstration. This ensures that all agencies are working together toward the same mission.”<sup>168</sup>

The IACP articulates recommendations for mutual aid agreements.<sup>169</sup> This includes specifying the type of assistance to be provided to the host agency, which will vary depending upon the needs and capabilities of each department.<sup>170</sup> “Command and control issues must be addressed in the mutual aid agreement. The mutual assistance agreement must be clear about who shall be in charge at the scene of any emergency and in other operations related to the emergency.”<sup>171</sup>

Mutual aid agreements are sometimes entered into for a specific purpose for a limited period of time, such as to address particular crime problems occurring across multiple jurisdictions or to create emergency response teams with special equipment that no one agency could independently maintain.<sup>172</sup> These agreements typically take the form of MOUs between agencies.<sup>173</sup> A MOU is a written agreement that establishes the terms on which two agencies will help each other for a specific, designated reason.<sup>174</sup>

On June 26, in response to the OIM’s document requests for “any written agreements or memoranda of understanding between the DPD and its [Mutual Aid Partners] to provide crowd control assistance to the DPD,” the DPD produced eight agreements or MOUs.<sup>175</sup> All were irrelevant to the mutual aid provided during the GFP. Six were irrelevant because the agencies did not respond to the

GFP and they covered matters other than crowd control mutual aid. Two were with agencies that did respond, the Adams County Sheriff's Office and the Aurora Police Department, but the MOUs had nothing to do with crowd control.<sup>176</sup> None of the agreements produced by the DPD addressed the mutual aid provided during the GFP or contained the parameters on which such aid would be provided. Table 2 presents the agreements produced by the DPD, whether or not each agency responded to the GFP, and the general subject matter of each agreement.

*Table 2: Agreements Produced by the DPD*

Agreement Produced by the DPD	Did Agency Respond to the GFP?	Subject Matter of the Agreement
Adams County Sheriff's Office, dated January 30, 2018	Yes	Officers and equipment to be provided by the DPD on Feb. 2, 2018 for mutual aid to Adams County
Aurora Police Department, dated April 28, 2011 <sup>177</sup>	Yes	Use of the DPD Training Facility
Auraria Campus Police Department, dated July 11, 2014	No	Ordinance enforcement
University of Colorado Denver Police Department, dated October 24, 2011 <sup>178</sup>	No	Use of the DPD Training Facility
University of Denver Campus Safety Department, dated November 8, 2019	No	Assistance from DPD for certain types of investigations and arrests
U.S. Federal Bureau of Prisons, Englewood, dated November 7, 2016	No	Assistance during a natural disaster or law enforcement emergency
U.S. Drug Enforcement Agency, dated August 20, 2019	No	Taskforce agreements
U.S. Department of Veterans Affairs Police, dated April 8, 2019	No	Jurisdictional investigation agreement

The DPD also produced emails sent by DPD's Deputy Chief and a division chief on May 29, May 31, and June 2 requesting assistance from various agencies. These one-sentence e-mails contained the request for mutual aid, the desired date of assistance, and the reason for the request. They did not enumerate the terms of the



mutual aid to be provided. DPD personnel informed us that they also made verbal requests for assistance, by telephone, to several of the agencies that responded.

It would have been impractical for the DPD to negotiate the terms of the mutual aid to be provided once the GFP were already underway, as command personnel were then absorbed by the unfolding emergency. For this reason, best practices recommend that these agreements be negotiated in advance, which was not done before the GFP.<sup>179</sup>

## Responding Mutual Aid Partners and The Types of Aid They Provided

Notwithstanding the absence of relevant mutual aid agreements, 18 Mutual Aid Partners did provide the DPD with support during the GFP.<sup>180</sup> Table 3 presents a list of these agencies.

*Table 3: Law Enforcement Agencies/Multijurisdictional Teams that Provided Aid to the DPD During the GFP<sup>181</sup>*

Agency/Multijurisdictional Team
1. Adams County Sheriff's Office
2. Arapahoe County Sheriff's Office
3. Arvada Police Department
4. Aurora Police Department
5. Brighton Police Department
6. Broomfield Police Department
7. Colorado Rangers Law Enforcement Shared Reserve
8. Colorado State Patrol
9. Commerce City Police Department
10. Douglas County Sheriff's Office
11. Golden Police Department
12. Jefferson County Regional SWAT Team
13. Lakewood Police Department
14. Regional Transportation District Transit Police Division
15. Thornton Police Department
16. U.S. Federal Bureau of Investigation
17. Westminster Police Department
18. Wheat Ridge Police Department

As noted above, the DPD produced the documents in its possession, which included some, but not all, of the requested information about mutual aid during the GFP. This included nine after-action reports generated by Mutual Aid Partners.<sup>182</sup> Some were relatively specific, while others were extremely vague.<sup>183</sup> Based on our analysis of the records produced by the DPD, the Mutual Aid Partners had varying levels of involvement in the GFP, with some playing a very active role in enforcement efforts. These agencies were directed to emergent incidents throughout the downtown area. They were responsible for blocking protester access to the interstate, providing security for the Denver Fire Department, and preventing property damage, among other tasks. Some agencies reported that they made arrests on their own, while others merely assisted the DPD with its arrests.

They also used force of varying kinds during the GFP. While many of the encounters were peaceful, some agencies reported that protesters threw objects at officers, prompting the deployment of gas canisters and less-lethal rounds. A number of agencies stated that their officers used less-lethal munitions of various kinds. One reported having used 83 40mm rounds, 77 gas grenades, 73 rubber-ball rounds, 66 bean-bag rounds, and 5 NFDDs. Some agencies reported using force frequently in order to move protesters or get them to disperse, which we saw during our video review. Additionally, several Denver community members filed complaints of excessive force against officers who they presumed were with the DPD. Internal investigation revealed that they were, in fact, officers from other agencies, and the complaints were referred to those agencies for review and potential investigation.

## **Inconsistent Policies, Equipment, and Munitions Among the DPD and its Mutual Aid Partners**

According to the DPD, officers who provided mutual aid during the GFP were required to follow the policies of their own agencies and not the DPD's use of force policy. We heard this in almost every interview of DPD command staff. Yet, best practices disfavor this approach. Instead, mutual aid arrangements should "make clear which agency is in charge and whose rules (particularly regarding use of force) and command will be followed."<sup>184</sup> The agreements must ensure that "policies and terminology on use of force and civil disobedience are consistent across agencies to prevent misunderstandings and loss of control during mass demonstrations."<sup>185</sup> Stated explicitly, officers who are providing mutual aid "must understand that they are under the command of the requesting agency and are required to follow its

policies and direction.”<sup>186</sup> To make certain that its policies are followed, the host agency should “use its own officers in the locations that are considered more likely to experience violence or other incidents that may require officers to use force.”<sup>187</sup>

## Use of Force Standards and Limitations

To assess the potential impacts of the DPD’s approach to this issue, the OIM requested that the DPD provide the use of force policies for all GFP Mutual Aid Partners. As described above, the DPD produced after-action reports and rosters but no use of force policies. The OIM obtained publicly available use of force policies for some of these agencies and compared them to the DPD Use of Force Policy. There were several key differences.

First, several agencies had enacted a less restrictive use of force standard than appeared in DPD policy. At the time of the GFP, the DPD Use of Force Policy stated that “officers must use only the amount of force reasonable and necessary under the totality of the circumstances to safely accomplish a lawful purpose.”<sup>188</sup> This was more restrictive than the standard then-required under Colorado law.<sup>189</sup> The Mutual Aid Partners had varying standards for when force could be used, including “reasonable and necessary,” while others included the less restrictive standard “reasonable” or “reasonable and appropriate.” While these differences might appear purely technical, they may have impacted the kinds of force used by officers and in what amounts.

Second, not all of the Mutual Aid Partner policies explicitly stated the resistance thresholds at which certain less-lethal equipment and munitions could be used. Best practices provide guidance about when certain less-lethal equipment and munitions may be used, some of which have been adopted in DPD policy.<sup>190</sup> For example, 40mm launchers can only be used when facing an “overt act or threat of an assault, coupled with the present ability to carry out the action, which reasonably indicates that an assault or injury to a person is likely.”<sup>191</sup> While some of the Mutual Aid Partners’ policies provided similar guidance, not all did. To be clear, less-lethal equipment and munitions can cause serious bodily injury and death. Without specific direction about the resistance thresholds at which they can be used, individual officers could be forced to make those determinations on their own in the middle of chaotic and stressful crowd-control situations.

Third, while the DPD Use of Force Policy required its officers to intervene to prevent other officers from using inappropriate force, not all of the Mutual Aid Partners’ policies included a similar requirement.<sup>192</sup> The duty to intervene is

established in best practices, with IACP's Model Use of Force Policy stating that an "officer has a duty to intervene to prevent or stop the use of excessive force by another officer when it is safe and reasonable to do so."<sup>193</sup> Consistent with this, the DPD Use of Force Policy required that, "[w]hen reasonably possible, considering the totality of the circumstances, officers will act to intervene whenever they witness inappropriate force and/or mistreatment of arrestees, suspects, or other persons."<sup>194</sup> Some of the use of force policies that were in effect mirrored this requirement, but not all.<sup>195</sup>

During interviews, DPD command staff stated that it would have been unreasonable to require officers from Mutual Aid Partners to adhere to the DPD's use of force standards while they were providing assistance in Denver given that they had been trained under different policies. While we understand this concern, it is for this very reason that best practice guides recommend that mutual aid partners conduct "joint periodic training . . . to ensure collective understanding of policies, procedures, and rules that must be followed by all officers during crowd management and control operations."<sup>196</sup> DPD command also pointed to the fact that a DPD sergeant was assigned as a liaison to each partner agency to help mitigate the effects of differences among agencies. Further, the DPD provided briefings to partner agencies and included some partner agency commanders in the Command Post. While these were useful practices, we do not believe that they were sufficient. We are persuaded by the best practices that indicate having a uniform set of standards for the use of force during mutual aid deployments is both preferable and achievable with sufficient preparation.

## **Less-Lethal Equipment and Munitions**

Best practices also state that Mutual Aid Partners should only utilize tools and munitions that are authorized by the host agency.<sup>197</sup> Inconsistent weapons and munitions can create confusion among officers that may undermine the host agency's goals.<sup>198</sup> To ensure consistency, the host agency should inspect the weapons and munitions brought by Mutual Aid Partners before they are deployed.<sup>199</sup> Based on the documentation reviewed by the OIM, certain Mutual Aid Partners used equipment and munitions during the GFP that were not approved for use by the DPD.

## Rubber-Ball Rounds

There are several types of impact projectiles, including foam and sponge rounds, and rubber-ball rounds that contain rubber balls similar to those used in rubber-ball grenades. The specifics vary by manufacturer, but rubber-ball rounds often contain approximately 180 rubber balls that travel at a velocity of 280–330 feet per second.<sup>200</sup> One manufacturer warns that rubber-ball rounds can cause “serious bodily injury or death.”<sup>201</sup> It also cautions that rubber-ball rounds can create a specific risk of eye injury.<sup>202</sup>



None of the documentation reviewed by the OIM suggests that the DPD used rubber-ball rounds during the GFP. The DPD Use of Force Policy and Crowd Management Manual do not discuss their use, and the inventory documents do not indicate that the DPD had any in inventory prior to the GFP. In fact, in a motion to modify a temporary restraining order related to the DPD’s response to the GFP, the City and County of Denver stated that it did not use rubber impact projectiles.<sup>203</sup>

Documentation provided by the DPD from its Mutual Aid Partners, however, showed that at least one Mutual Aid Partner deployed rubber-ball rounds during the GFP. The agency described the rounds as rubber pellets “designed to cause pain but not serious injury” and indicated that its officers deployed at least 73 of the rounds.<sup>204</sup>

## Less-Lethal Shotguns

During the GFP, the DPD deployed impact projectiles from pepperball and 40mm launchers. Some law enforcement agencies, on the other hand, used less-lethal shotguns to deploy impact projectiles. Less-lethal shotguns are typically traditional 12-gauge pump action shotguns that are converted into less-lethal devices, often by fitting them with orange stocks and forends, and placing “less lethal” labels on the stock.<sup>205</sup> Less-lethal shotguns are still able to fire lethal rounds, but officers only load them with less-lethal munitions. Their range and accuracy vary by the type of less-lethal shotgun and munition used, but 40mm launchers and the associated munitions are generally more accurate and have a longer effective range.<sup>206</sup> Munitions manufacturers warn that less-lethal shotguns can cause serious bodily injury and



death, and because they can still fire standard ammunition, there is a risk that officers mistakenly load them with lethal rounds.<sup>207</sup>

Based on the documentation reviewed by the OIM, the DPD did not deploy less-lethal shotguns during the GFP. The DPD Use of Force Policy does not reference their use, and none of the inventory documents suggest that the DPD had less-lethal shotgun munitions in inventory prior to the GFP. In response to a request for information about DPD use of less-lethal shotguns, the DPD indicated that it does not use less-lethal shotguns. Despite this, several Mutual Aid Partners reported using less-lethal shotguns during the first five days of the GFP, and officers from these agencies deployed more than 150 less-lethal shotgun rounds.

## Beanbag Rounds

In addition to foam and rubber-ball projectiles, 40mm launchers and less-lethal shotguns can also fire beanbag rounds. The velocity and range depend on the manufacturer and deployment device, but the “beanbags” are generally filled with #9 lead shot. One manufacturer warns that “[s]hots to the head, neck, thorax, heart, or spine can result in fatal or serious injury.”<sup>208</sup> Research partly funded by the Department of Justice describes several instances in which beanbag rounds have been fatal.<sup>209</sup>



Documents produced by the DPD do not indicate that any DPD officers used beanbag rounds during the GFP. As with less-lethal shotguns, the DPD Use of Force Policy does not mention the munition, and the pre-GFP inventory documents do not include any beanbag rounds. Although DPD officers did not deploy beanbag rounds, several Mutual Aid Partners reported using them. Officers from these agencies deployed more than 200 beanbag rounds during the GFP.

## Conclusions and Recommendations Regarding Mutual Aid

The DPD understandably reached out to neighboring jurisdictions for mutual aid during the GFP, and DPD command staff have persuasively explained the value of that aid. Yet, we believe that the framework under which it was provided was deficient in several important ways. Therefore:

- 13) *The OIM recommends that the DPD develop mutual aid agreements with neighboring jurisdictions that address potential crowd control assistance. These*

*agreements should adhere to best practices, including but not limited to specifying the circumstances under which assistance may be requested and provided, acceptable request methods, forms of assistance to be provided, and an agreed upon command and control structure.<sup>210</sup>*

- 14) The OIM recommends that during future mutual aid deployments in Denver, the DPD require its Mutual Aid Partners to adhere to the DPD's Use of Force Policy, and to utilize only types of weapons and munitions approved for use by the DPD.*
- 15) The OIM recommends that the DPD seek to participate in periodic joint trainings and exercises with its potential Mutual Aid Partners to ensure a unified and consistent response during future mutual aid deployments in Denver.*

## Additional Issues Referred for DPD Review

We have thus far provided analysis and specific recommendations that are intended to help the DPD learn from the GFP in order to improve its responses to future protests. During our review, we also became aware of certain issues that we now refer to the DPD for its own consideration. This includes concerns expressed to us by various DPD supervisors and officers that:

- They received little guidance from an on-the-ground field commander during the GFP, in contrast to previous protests when they received significant strategic and tactical direction from a clearly-identified Operations Chief;
- The single radio channel used for all police radio transmissions during the GFP was overcrowded and often inaccessible for communication with the Command Post, which raised concerns about officer and community safety; and
- They believe that the DPD has not made enough recent investments in crowd control and field force operations training to properly prepare officers for an event like the GFP, and they would like that to change.

## The Role of the Operations Chief During Mass Protests

The Incident Command System (“ICS”) is a standardized approach to the command and control of an emergency response that provides a common hierarchy for first responders, including police.<sup>211</sup> Best practice guides recommend that police departments adopt ICS during mass protests and civil disturbances.<sup>212</sup> One function of ICS includes appointing an Incident Commander to become responsible for the overall management of mass protests.<sup>213</sup> The Incident Commander also establishes the Command Post and determines the priorities and objectives of the police response.<sup>214</sup>

Another key role in ICS is that of the Chief of the Operations Section, or the “Operations Chief.”<sup>215</sup> The Operations Chief develops and executes the tactics necessary to achieve the objectives established by the Incident Commander.<sup>216</sup> That is, the Operations Chief is the on-the-ground commander with primary responsibility for the tactics employed in the field.<sup>217</sup> The Incident Commander, who is based in the Command Post, and the Operations Chief, who largely works in the field, should be in frequent communication and work in tandem throughout a mass protest.<sup>218</sup>



The DPD has traditionally used ICS in managing its responses to mass protests and did so during the GFP.<sup>219</sup> Yet, our interviews with DPD supervisors in both the field and the Command Post caused us concern. There was nearly universal praise from DPD personnel for the Incident Commander responsible for the GFP. Yet, supervisors of multiple ranks told us that they often received insufficient direction in the field and sometimes did not even know who the appointed Operations Chief was on particular days. They sometimes reported a lack of clarity about their strategic objectives, which led to confusion about when to advance on, retreat from, or hold specific pieces of ground downtown. This concern was so strongly voiced by DPD personnel that we believe it merits specific scrutiny by the DPD to ensure that it is addressed before future protests.

## **Overcrowded Radio Channel and “Bonking” During the GFP**

In our interviews with officers and supervisors, a frequent complaint was that excessive traffic on the single radio channel used during the GFP hampered the free flow of information between the Command Post and the field. There are many reasons why supervisors would need to communicate with the Command Post, including requesting additional officers, sharing information about individual or crowd behavior, and seeking direction about whether or not to use force in response, among others. DPD personnel told us that during the times of highest activity, the radio channel became exceedingly crowded, leaving them unable to broadcast. Officers described a phenomenon called “bonking,” when they would key up their radios to broadcast but would instead get a “bonk” tone indicating that another officer was already occupying the channel. Many supervisors described their frustration with repeatedly “bonking,” sometimes in the middle of heated clashes, leaving them unable to communicate with the Command Post. Sometimes, they said, they just gave up trying, or they switched to cell phones, which were difficult to use given that officers were wearing gas masks.

The DPD began using a Motorola P25 encrypted radio system in March 2019. It is a trunked two-way radio system designed for public safety, and indeed, it is used by all of Denver’s public safety agencies.<sup>220</sup> The system allows for the creation of groups of users, called “talkgroups,” and all members of a talkgroup share a single radio channel.<sup>221</sup> Early in the GFP, the DPD created multiple talkgroups for officers assigned to different parts of the downtown area. However, the Command Post became concerned that when it needed to broadcast information to all officers, having multiple talkgroups made that less efficient. All officers were thus consolidated into one talkgroup on a single radio channel for the remainder of the GFP.

We believe that the DPD should closely analyze the many complaints of supervisors and officers about the overcrowded single radio channel used during the GFP in order to determine whether a different talkgroup or radio structure would better facilitate communication during future large-scale deployments.

## **Demand for Additional Crowd Control Training**

Best practices emphasize the importance of crowd control and field force operations training to prepare officers to effectively respond to mass demonstrations.<sup>222</sup> Such training helps officers coordinate their movements along skirmish lines, maintain officer and community safety, de-escalate potential confrontations, and only judiciously use less-lethal munitions in crowd control situations, if necessary.<sup>223</sup> Officers should receive this training as recruits and in regular refresher courses throughout their careers.<sup>224</sup> Team leaders, supervisors, and commanders should also receive initial and refresher training to ensure that they can lead the officers under their command in effective and Constitutional policing during mass protests.<sup>225</sup>

During interviews, DPD personnel often brought up their desire to receive additional crowd control and field force operations training. They spoke very positively about the extensive training they received in preparation for the 2008 Democratic National Convention, which included multi-day Federal Emergency Management Agency field force training, and subsequent refreshers. Some also expressed a perception that there has been less attention to crowd control training in recent years and noted that the time for such training often conflicts with the demands of normal patrol duties. During our review, we examined training records produced by the DPD's Training Academy, which revealed that there has been a decline in the volume and frequency of crowd control and field force training in recent years.

We understand that freeing officers for multi-day crowd control training may be difficult given their other patrol responsibilities. Doing so is critical, however, because crowd control skills are perishable, officers are not normally required to use them during patrol, and the consequences of being caught unprepared can be severe.<sup>226</sup> We believe that the DPD could benefit from an internal training review among command staff, training personnel, patrol supervisors, and officers to ensure that the content and frequency of the DPD's crowd control training strikes the right balance and properly prepares officers for future crowd control events.

## Recommendation Regarding Additional Issues Referred for DPD Review

*16) The OIM recommends that the DPD convene internal stakeholders to evaluate possible operational issues that arose during the GFP, including but not limited to concerns raised by some supervisors and officers: 1) that they received little guidance from an on-the-ground field commander or Operations Chief conveying clear tactical and strategic objectives; 2) that the single radio channel used by all officers was often overcrowded and inaccessible for communication with the Command Post; and 3) that the DPD needs to substantially increase its investments in crowd control and field force training to properly prepare officers for the possibility of other mass protest events in the future.*

## Conclusion

The protests that began on May 28, 2020 were unlike any others in Denver's history, given their size and scale, as well as the injuries and damage that resulted from them. As we issue this report and make these recommendations, we also note that Denver is very fortunate to have a public safety team, led by Chief Paul Pazen and Executive Director of Safety Murphy Robinson, who are committed to reform and building community trust. Director Robinson and Chief Pazen have indicated that they have begun making changes in response to the GFP. We have full confidence in their commitment to learning from these events and making the changes necessary to prevent similar outcomes in the future.

## The Police Response to the 2020 George Floyd Protests in Denver, An Independent Review, OIM Recommendations:

### Recommendations Regarding Internal Controls on the Use of Force

- 1) *The OIM recommends that the DPD amend its Operations and Crowd Management Manuals to require the creation of a log or tracking system for the distribution and deployment of all less-lethal munitions during crowd control events.*
- 2) *The OIM recommends that the DPD amend its Crowd Management Manual to require the creation of rosters of all officers who are assigned to crowd control events, and that the DPD ensure that such rosters are created in the future.*
- 3) *The OIM recommends that the DPD amend its Operations and Crowd Management Manuals to require that all sworn personnel working in the field during protest operations be required to wear BWCs, regardless of rank. Further, the OIM recommends that protest operations plans assign a supervisor to conduct regular spot check comparisons between rosters and the BWC database to identify any gaps in officer recording that must be addressed.*
- 4) *The OIM recommends that the DPD amend its Operations and Crowd Management Manuals to detail the specific requirements for use of force reporting and review during crowd control operations. The OIM also recommends that the DPD ensure that Use of Force Reports are promptly created by officers and reviewed by supervisors and LAB during future crowd control events to identify possible divergences from the Use of Force Policy.*
- 5) *The OIM recommends that during future protest events, the DPD ensure that its supervisors routinely issue multiple dispersal orders before using force to disperse crowds, when time and circumstances permit.*
- 6) *The OIM recommends that the DPD ensure that crowd dispersal orders are consistently audio or video recorded and documented in writing during future crowd control events.*
- 7) *The OIM recommends that the DPD ensure that all officers have their badges and badge numbers prominently displayed and easily visible on the exterior of their uniforms or protective gear at all times during future crowd control events. The OIM also recommends that supervisors should be required to verify compliance for each member of the teams under their command.*

- 8) *The OIM recommends that the DPD ensure that only officers who have been trained and certified on the use of pepperball and 40mm launchers be permitted to use them during future crowd control events. The OIM also recommends that the DPD amend its Crowd Management Manual to specify that only authorized officers will be allowed to use pepperball and 40mm launchers during crowd control operations.*
- 9) *To enhance transparency, the OIM recommends that the DPD evaluate how to most effectively operationalize each of the internal controls on the use of force discussed in this report, and report back to the public with an explanation of how they will be employed during future protests.*

## **Recommendations Regarding Substantive Use of Force Issues and DPD Policy**

- 10) *The OIM recommends that the DPD disallow the use of rubber-ball grenades during crowd control operations. The OIM further recommends that the DPD articulate clear and specific standards for when rubber-ball grenades may be used, by whom, and when their use is prohibited in its Operations Manual.*
- 11) *The OIM recommends that the DPD articulate clear and specific standards for when NFDDs may be used, by whom, and when they are prohibited in its Operations Manual.*
- 12) *The OIM recommends that the DPD revise its standards for pepperball use during crowd control situations to limit direct-fired applications to only circumstances in which a person is displaying active aggression or aggravated active aggression.*

## **Recommendations Regarding Mutual Aid**

- 13) *The OIM recommends that the DPD develop mutual aid agreements with neighboring jurisdictions that address potential crowd control assistance. These agreements should adhere to best practices, including but not limited to specifying the circumstances under which assistance may be requested and provided, acceptable request methods, forms of assistance to be provided, and an agreed upon command and control structure.<sup>227</sup>*
- 14) *The OIM recommends that during future mutual aid deployments in Denver, the DPD require its Mutual Aid Partners to adhere to the DPD's Use of Force Policy, and to utilize only types of weapons and munitions approved for use by the DPD.*

15) *The OIM recommends that the DPD seek to participate in periodic joint trainings and exercises with its potential Mutual Aid Partners to ensure a unified and consistent response during future mutual aid deployments in Denver.*

## **Recommendations Regarding Additional Issues Referred for DPD Review**

16) *The OIM recommends that the DPD convene internal stakeholders to evaluate possible operational issues that arose during the GFP, including but not limited to concerns raised by some supervisors and officers: 1) that they received little guidance from an on-the-ground field commander or Operations Chief conveying clear tactical and strategic objectives; 2) that the single radio channel used by all officers was often overcrowded and inaccessible for communication with the Command Post; and 3) that the DPD needs to substantially increase its investments in crowd control and field force training to properly prepare officers for the possibility of other mass protest events in the future.*



## Endnotes

<sup>1</sup> Officers continued policing the protest after midnight on each of the first five days of the GFP, and the DPD Command Post did not generally close until after 1:30 a.m. the next morning. When arrests were made between midnight and 5:00 a.m., we counted the arrest as relating to the prior day's protest. For example, an arrest at 2:30 a.m. on May 29, 2020, would be treated as an arrest on the first day of the protest, May 28, 2020.

<sup>2</sup> Kristen Leigh Painter, *Occupy Denver Joins Occupy Wall Street in May Day Protests*, The Denver Post (May 1, 2012).

<sup>3</sup> Kristen Leigh Painter, *Occupy Denver Joins Occupy Wall Street in May Day Protests*, The Denver Post (May 1, 2012).

<sup>4</sup> Colleen O'Connor, *Denver Protests Peaceful Thursday Night*, The Denver Post (July 7, 2016).

<sup>5</sup> Colleen O'Connor, *Denver Protests Peaceful Thursday Night*, The Denver Post (July 7, 2016).

<sup>6</sup> Sam Tabachnik, *10,000 Expected at Denver Protests for George Floyd on Saturday*, Greeley Tribune (May 30, 2020).

<sup>7</sup> See, e.g., Elise Schmelzer, *Denver Protest Bystander Blind in One Eye After Being Hit by Police With "Less Lethal" Projectile*, The Denver Post (June 9, 2020); Lori Jane Gliha, *Police Projectile Fractures Denver Protester's Face; She Says It Was Unprovoked*, FOX31 Denver (June 3, 2020); Noelle Phillips, *College Student Hit in Face by 40mm Round During Police Protests Sues Denver*, The Denver Post (Oct. 22, 2020).

<sup>8</sup> Conrad Swanson, *Denver's George Floyd Protests Cost at Least \$5.5 Million in Damage, Overtime*, The Denver Post (June 26, 2020).

<sup>9</sup> Russell Haythorn, *State Capitol Damage Estimated at \$1.1m as Crews Clean Graffiti, Replace Windows After Summer Chaos*, Denver 7 (Oct. 22, 2020).

<sup>10</sup> Heidi Reynolds-Stenson, *Protesting the Police: Anti-Police Brutality Claims as a Predictor of Police Repression of Protest*, Social Movement Studies (2018).

<sup>11</sup> Heidi Reynolds-Stenson, *Protesting the Police: Anti-Police Brutality Claims as a Predictor of Police Repression of Protest*, Social Movement Studies (2018).

<sup>12</sup> Letter from Independent Monitor Nicholas E. Mitchell to Denver Police Department Chief Paul Pazen (June 12, 2020) (attached as Appendix D).

<sup>13</sup> E-mail from Commander Jeffrey Martinez to Independent Monitor Nicholas E. Mitchell (July 16, 2020) (on file with author) (sharing information from the DPD Less-Lethal Coordinator that he did "not have the number of munitions deployed" and that the pre-protest inventory was insufficient to determine the number deployed because the DPD "utilized similar munitions donated from outside agencies").

<sup>14</sup> E-mail from DPD Commander Jeffrey Martinez to Independent Monitor Nicholas E. Mitchell (July 16, 2020) (on file with author) (stating that "[r]osters for 5/28, 529 [sic], and 5/30 do not exist"); e-mail from DPD Commander Jeffrey Martinez to Independent Monitor Nicholas E. Mitchell (Sept. 14, 2020) (on file with author) (forwarding an e-mail from DPD Lieutenant Julie Wheaton stating that "[t]here is no roster for 05/31").



<sup>15</sup> United Tactical Systems, Full Tactical Carbine FTC User Manual (2017); United Tactical Systems, LIVE-X Round Specification Sheet (2018); United Tactical Systems, Inert Round Specification Sheet (2019).

<sup>16</sup> United Tactical Systems, LIVE-X Round Specification Sheet (2018); United Tactical Systems, Inert Round Specification Sheet (2019).

<sup>17</sup> DPD, PepperBall Operator Certification Instructor Slides, at 59 (version 6.20).

<sup>18</sup> United Tactical Systems, Full Tactical Carbine FTC User Manual, at 4 (2017).

<sup>19</sup> DPD, PepperBall Operator Certification Instructor Slides, at 34 (version 6.20).

<sup>20</sup> DPD, PepperBall Operator Certification Instructor Slides, at 61 (version 6.20).

<sup>21</sup> DPD, PepperBall Operator Certification Instructor Slides, at 34 (version 6.20).

<sup>22</sup> DPD, Operations Manual §§ 105.01(14), 105.02(4)(f)(1) (revised Jan. 27, 2019).

<sup>23</sup> Combined Systems, 40mm Single Shot Launcher Compact Specification Sheet (revised Apr. 2018); Combined Systems, 40mm Multi Shot, Pump Advance Launcher, 5" Cylinder Specification Sheet (revised Apr. 2018); Defense Technology, 40mm Direct Impact Round OC, CS, Inert, and Marking Specification Sheet (revised June 2020).

<sup>24</sup> Defense Technology, 40mm Direct Impact Round OC, CS, Inert, and Marking Specification Sheet (revised June 2020); Defense Technology, 40mm eXact iMpaCt Sponge Round Specification Sheet (revised Aug. 2020).

<sup>25</sup> Defense Technology, 40mm Direct Impact Round OC, CS, Inert, and Marking Specification Sheet (revised June 2020).

<sup>26</sup> DPD, 40mm Operator Certification Instructor Slides, at 36 (version 6.20).

<sup>27</sup> DPD, 40mm Operator Certification Instructor Slides, at 55-58 (version 6.20).

<sup>28</sup> Combined Systems, 40mm Single Shot Launcher Compact Specification Sheet (revised Apr. 2018); Combined Systems, 40mm Multi Shot, Pump Advance Launcher, 5" Cylinder Specification Sheet (revised Apr. 2018).

<sup>29</sup> DPD, Operations Manual §§ 105.01(3)(e), 105.02(4)(d)(1) (revised Jan. 27, 2019).

<sup>30</sup> Defense Technology, MK-9 Aerosol Projector (revised June 2020).

<sup>31</sup> National Institute of Justice, *Oleoresin Capsicum: Pepper Spray as a Force Alternative*, at 1 (Mar. 1994).

<sup>32</sup> Defense Technology, MK-9 Aerosol Projector (revised June 2020).

<sup>33</sup> DPD, Operations Manual § 105.02(3)(b)(1) (revised Jan. 27, 2019).

<sup>34</sup> *See, e.g.*, Defense Technology, Triple-Chaser Grenade Continuous Discharge OC, CN, CS and SAF-Smoke Specification Sheet (revised June 2020); Defense Technology, Spede Heat Grenade Continuous Discharge OC, CN, and CS Specification Sheet (revised June 2020); Defense Technology, SAF-Smoke Grenade Training and Operational Specification Sheet (revised June 2020).

<sup>35</sup> Defense Technology, Spede-Heat Continuous Discharge Chemical Grenade, CS, available at <https://www.defense-technology.com/product/spede-heat-continuous-discharge-chemical-grenade-cs/>.

<sup>36</sup> Defense Technology, Spede Heat Grenade Continuous Discharge OC, CN, and CS Specification Sheet (revised June 2020).

<sup>37</sup> Defense Technology, Spede Heat Grenade Continuous Discharge OC, CN, and CS Specification Sheet (revised June 2020).

<sup>38</sup> DPD, Operations Manual § 105.02(3)(b)(1) (revised Jan. 27, 2019).

<sup>39</sup> Defense Technology, Stinger Grenade w/ Safety Clip Rubber Pellet RP, RP/CS, and RP/OC Specification Sheet (revised June 2020).

<sup>40</sup> Defense Technology, Stinger Grenade w/ Safety Clip Rubber Pellet RP, RP/CS, and RP/OC Specification Sheet (revised June 2020).

<sup>41</sup> Defense Technology, Stinger Grenade w/ Safety Clip Rubber Pellet RP, RP/CS, and RP/OC Specification Sheet (revised June 2020).

<sup>42</sup> DPD, Operations Manual § 105.02 (revised Jan. 27, 2019); DPD, Crowd Management Manual (revised Feb. 13, 2019).

<sup>43</sup> Combined Systems, Flash-Bang, Mini-Bang Steel Body Single Use Specification Sheet (revised Mar. 2019).

<sup>44</sup> Poornima Madhavan and Christian Dobbins, *Path Analysis of Human Effects of Flashbang Grenades*, Institute for Defense Analyses, at 1, 9, 19 (2018).

<sup>45</sup> Americans for Effective Law Enforcement Monthly Law Journal, *Civil Liability for Use of Distraction Devices Part 2*, at 104 (Feb. 2015).

<sup>46</sup> Americans for Effective Law Enforcement Monthly Law Journal, *Civil Liability for Use of Distraction Devices Part 2*, at 102 (Feb. 2015).

<sup>47</sup> Americans for Effective Law Enforcement Monthly Law Journal, *Civil Liability for Use of Distraction Devices Part 2*, at 105 (Feb. 2015).

<sup>48</sup> Combined Systems, Flash-Bang, Mini-Bang Steel Body Single Use Specification Sheet (revised Mar. 2019).

<sup>49</sup> DPD, Operations Manual § 105.02 (revised Jan. 27, 2019); DPD, Crowd Management Manual (revised Feb. 13, 2019).

<sup>50</sup> The DPD provided district inventory spreadsheets from May 2020 and a separate count of less-lethal munitions stored in the DPD Police Administration Building armory conducted by the Denver Department of Public Health and Environment. The counts presented in this report are based on the May 2020 district inventory spreadsheets.

<sup>51</sup> Invoices provided by the DPD indicate that the specific order was for 70 40mm rounds and 200 gas grenades.

<sup>52</sup> Police Foundation, *Managing Large-Scale Security Events: A Planning Primer for Local Law Enforcement Agencies*, at 30 (2018).

<sup>53</sup> See, e.g., Oakland Police Department, Crowd Control and Crowd Management Manual, at 17 (revised Oct. 2013).

<sup>54</sup> Police Foundation, *Managing Large-Scale Security Events: A Planning Primer for Local Law Enforcement Agencies*, at 30 (2018).

<sup>55</sup> The DPD Inventory and Transfer of Department Property and Equipment Policy requires individual bureaus, divisions, districts, sections, and units to maintain an inventory of, among other items, all less-lethal equipment and munitions. Each division and district commander appoints an Inventory Control Officer that manages the day-to-day inventory tracking and coordinates with the Inventory Control Unit, which maintains overall DPD inventory records and conducts annual physical audits. DPD, Operations Manual § 504.03 (revised Feb. 16, 2018).

<sup>56</sup> E-mail from Commander Jeffrey Martinez to Independent Monitor Nicholas E. Mitchell (July 16, 2020) (on file with author) (sharing information from the DPD Less-Lethal Coordinator that he did “not have the number of munitions deployed” and that the pre-protest inventory was insufficient to determine the number deployed because the DPD “utilized similar munitions donated from outside agencies”).

<sup>57</sup> IACP Law Enforcement Policy Center, *Incident Command System Model Policy*, at 3 (2009) (recommending the creation of a “master record of all personnel and components involved in the response to a critical incident,” including, among other items, personnel rosters).

<sup>58</sup> DPD, Operations Manual § 108.01(4)(c) (revised Jan. 2006) (requiring the appointed commander of “any emergency situation requiring the employment of a large number of officers” to, among other things, “maintaining duty assignment records for all personnel committed to the emergency”).

<sup>59</sup> E-mail from Independent Monitor Nicholas E. Mitchell to DPD Lieutenant Robert Wykoff (Nov. 11, 2020) (on file with author).

<sup>60</sup> See, e.g., Police Foundation, *Managing Large-Scale Security Events: A Planning Primer for Local Law Enforcement Agencies*, at 30, 39 (Apr. 2018).

<sup>61</sup> Police Foundation, *Advancing Charlotte: A Police Foundation Assessment of the Charlotte-Mecklenburg Police Department Response to the September 2016 Demonstrations*, at 48 (Feb. 2018).

<sup>62</sup> Police Foundation, *Advancing Charlotte: A Police Foundation Assessment of the Charlotte-Mecklenburg Police Department Response to the September 2016 Demonstrations*, at 48 (Feb. 2018).

<sup>63</sup> Police Executive Research Forum, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*, US Department of Justice Office of Community Oriented Policing Services, at 5-7 (2014).

<sup>64</sup> Noelle Phillips, *Body Cameras for Denver Police to Cost \$6.1 Million Over Five Years*, The Denver Post (July 7, 2015); DPD, Operations Manual § 119.04 (revised Apr. 8, 2020).

<sup>65</sup> DPD, Operations Manual § 119.04(3) (revised Apr. 8, 2020).

<sup>66</sup> The Gang Unit is also referred to as the Special Operations Response Team. DPD, Operations Manual § 2.103 (revised Sept. 1, 2020).

<sup>67</sup> DPD, Operations Manual § 119.04(3) (revised Apr. 8, 2020).

<sup>68</sup> DPD Operations Manual §§ 119.04(3)(g), 119.04(3)(m) (revised Apr. 8, 2020).

<sup>69</sup> DPD, Operations Manual § 119.04(4)(g) (revised Apr. 8, 2020).

<sup>70</sup> DPD, Operations Manual § 119.04(4)(a) (revised Apr. 8, 2020).

<sup>71</sup> See DPD, Operations Manual § 108.08 (revised Jan. 2006); DPD, Operations Manual § 119.04 (revised Apr. 8, 2020); DPD, Crowd Management Manual (Feb. 13, 2019).

<sup>72</sup> Letter from Independent Monitor Nicholas E. Mitchell to Denver Police Department Chief Paul Pazen (June 12, 2020) (attached as Appendix D).

<sup>73</sup> E-mail from Evidence.com to Independent Monitor Nicholas E. Mitchell (June 18, 2020) (on file with author).

<sup>74</sup> E-mail from Evidence.com to Independent Monitor Nicholas E. Mitchell (June 26, 2020) (on file with author); e-mail from Evidence.com to Independent Monitor Nicholas E. Mitchell (July 16, 2020) (on file with author).

<sup>75</sup> E-mail from DPD Commander Jeffrey Martinez to Independent Monitor Nicholas E. Mitchell (July 15, 2020) (on file with author).

<sup>76</sup> The OIM built this list using the names of officers found on the June 1, 2020 roster and daily detail report, and officer written statements and arrest records from the first five days of the GFP. E-mail from Independent Monitor Nicholas E. Mitchell to DPD Sergeant Mark Beveridge (Aug. 22, 2020) (on file with author).

<sup>77</sup> E-mail from Evidence.com to Independent Monitor Nicholas E. Mitchell (Sept. 3, 2020) (on file with author).

<sup>78</sup> The Evidence.com links also included image files and videos from the DPD Air One helicopter.

<sup>79</sup> E-mail from DPD Commander Jeffrey Martinez to Independent Monitor Nicholas E. Mitchell (July 16, 2020) (on file with author) (stating that “[r]osters for 5/28, 529 [sic], and 5/30 do not exist”); e-mail from DPD Commander Jeffrey Martinez to Independent Monitor Nicholas E. Mitchell (Sept. 14, 2020) (on file with author) (forwarding an e-mail from DPD Lieutenant Julie Wheaton stating that “[t]here is no roster for 05/31”).

<sup>80</sup> DPD, Operations Manual § 119.04(4)(1)(a) (revised Apr. 8, 2020).

<sup>81</sup> DPD, Operations Manual § 119.04(3)(a)(1) (revised Apr. 8, 2020).

<sup>82</sup> The DPD requires that sergeants and below in uniformed on-duty line assignments must utilize the BWC system when on duty. When volunteering in uniform or working off-duty secondary employment jobs, the DPD generally requires that officers below the rank of commander use BWC systems. DPD, Operations Manual § 119.04(3) (revised Apr. 8, 2020).

<sup>83</sup> A lawsuit filed on June 4, 2020 resulted in the issuance of a temporary restraining order on the ninth night of protests, June 5, 2020, which was then modified by the court on June 6, 2020, requiring all officers working the demonstrations to activate BWC during, “any and all acts of confrontation between police officers and others.” *Abay v. City and County of Denver Order on the Motion to Amend*, 20-CV-01616 (D. Colo., June 6, 2020).

<sup>84</sup> IACP Law Enforcement Policy Center, *Crowd Management Model Policy* § (IV)(E)(3)(j) (Apr. 2019).

<sup>85</sup> IACP Law Enforcement Policy Center, *Reporting of Use of Force Concepts and Issues Paper*, at 4 (Mar. 2017).

<sup>86</sup> Leadership Conference Education Fund, *New Era of Public Safety: A Guide to Fair, Safe, and Effective Community Policing*, at 146 (2019).

<sup>87</sup> DPD, Operations Manual § 105.03(1)(a) (revised Jan. 27, 2019).

<sup>88</sup> With authorization of the Chief of Police or designee, multiple uses of chemical munitions during large-scale events may be documented with a single use of force report. DPD, Operations Manual § 105.03(2)(a)(9) (revised Jan. 27, 2019).

<sup>89</sup> DPD, Operations Manual §§ 105.03(2)(b-c), 105.03(3) (revised Jan. 27, 2019).

<sup>90</sup> DPD, Operations Manual § 105.03(2) (revised Jan. 27, 2019).

<sup>91</sup> DPD, Operations Manual §§ 105.03(2), 105.03(6) (revised Jan. 27, 2019).

<sup>92</sup> DPD, Crowd Management Manual (revised Feb. 13, 2019).

<sup>93</sup> *Jones v. Parmley*, 465 F.3d 46, 56 (2d Cir. 2006) (citing *Cox v. Louisiana*, 379 U.S. 536, 550 (1965) (noting that “constitutional rights may not be denied simply because of hostility to their assertion or exercise”) (quoting *Watson v. City of Memphis*, 373 U.S. 526, 535 (1963) (internal quotation marks omitted); *Edwards v. South Carolina*, 372 U.S. 229, 237 (1963) (political speech is protected even though it invites dispute and may stir people to anger)).

<sup>94</sup> IACP Law Enforcement Policy Center, *Crowd Management Model Policy* § (IV)(F)(1) (Apr. 2019).

<sup>95</sup> IACP Law Enforcement Policy Center, *Crowd Management Model Policy* § (IV)(F)(3) (Apr. 2019).

<sup>96</sup> IACP Law Enforcement Policy Center, *Crowd Management Model Policy* § (IV)(F)(3)(a) (Apr. 2019).

<sup>97</sup> IACP Law Enforcement Policy Center, *Crowd Management Model Policy* § (IV)(F)(3)(b) (Apr. 2019).

<sup>98</sup> DPD, Crowd Management Manual, at 12 (revised Feb. 13, 2019).

<sup>99</sup> DPD, Crowd Management Manual, at 13 (revised Feb. 13, 2019).

<sup>100</sup> DPD, Crowd Management Manual, at 13-14 (revised Feb. 13, 2019).

<sup>101</sup> DPD Crowd Management Manual, at 14 (revised Feb. 13, 2019).

<sup>102</sup> DPD, Crowd Management Manual, at 14 (revised Feb. 13, 2019).

<sup>103</sup> DPD, Operations Plan for the Justice for George Floyd Protest and Rally, at 10 (May 28, 2020); DPD, Operations Plan for the Justice for George Floyd Protest and Rally, at 10 (May 29, 2020).

<sup>104</sup> E-mail from DPD Commander Jeffrey Martinez to Independent Monitor Nicholas E. Mitchell (Aug. 21, 2020) (on file with author).

<sup>105</sup> The DPD requires that sergeants and below in uniformed on-duty line assignments must use the BWC system when on duty. DPD, Operations Manual § 119.04(3) (revised Apr. 8, 2020).

<sup>106</sup> Institute for Intergovernmental Research, *After-Action Assessment of the Police Response to the August 2014 Demonstrations in Ferguson, Missouri*, US Department of Justice Office of Community Oriented Policing Services, at 78 (2015).

<sup>107</sup> IACP Law Enforcement Policy Center, *Crowd Management Concepts and Issues Paper*, at 5 (Apr. 2019).

<sup>108</sup> IACP Law Enforcement Policy Center, *Crowd Management Model Policy* § (IV)(C)(2) (Apr. 2019).

<sup>109</sup> Police Executive Research Forum, *Lessons Learned from the 2015 Civil Unrest in Baltimore*, at 57 (Sept. 2015).

<sup>110</sup> DPD, Operations Manual § 111.01(3)(a) (revised Oct. 4, 2019).

<sup>111</sup> DPD, Crowd Management Manual, at 30 (revised Feb. 13, 2019).

<sup>112</sup> DPD, Crowd Control Refresher Training Presentation Slides, at 47.

<sup>113</sup> IACP Law Enforcement Policy Center, *Crowd Management Model Policy* § (IV)(E)(3) (Apr. 2019).

<sup>114</sup> United Tactical Systems, Full Tactical Carbine FTC User Manual, at 4, 12 (2017).

<sup>115</sup> Combined Systems, 40mm Single Shot Launcher Compact Specification Sheet (2018); Combined Systems, 40mm Multi Shot, Pump Advance Launcher, 5" Cylinder Specification Sheet (2018); Defense Technology, 40mm Direct Impact Round OC, CS, Inert, and Marking Specification Sheet (2018).

<sup>116</sup> DPD, Operations Manual § 105.02(5)(a) (revised Jan. 27, 2019).

<sup>117</sup> DPD, Operations Manual § 105.02(5)(a) (revised Jan. 27, 2019).

<sup>118</sup> DPD, Operations Manual § 105.02(5)(a) (revised Jan. 27, 2019).

<sup>119</sup> DPD, Operations Manual § 105.02(5)(a) (revised Jan. 27, 2019).

<sup>120</sup> Letter from Denver City Councilmembers to Independent Monitor Nicholas E. Mitchel, Executive Director of Public Safety Murphy Robinson, and Chief of Police Paul Pazen (June 5, 2020) (attached as Appendix D).

<sup>121</sup> Letter from Nicholas E. Mitchell to Denver Police Chief Paul Pazen (Nov. 20, 2020) (on file with author).

<sup>122</sup> IACP Law Enforcement Policy Center, *Crowd Management Model Policy* § (IV)(E) (Apr. 2019).

<sup>123</sup> DPD, Operations Manual § 105.02 (revised Jan. 27, 2019); DPD, Crowd Management Manual (revised Feb. 13, 2019).

<sup>124</sup> Defense Technology, Stinger Grenade w/ Safety Clip Rubber Pellet RP, RP/CS, and RP/OC Specification Sheet (revised June 2020).

<sup>125</sup> Defense Technology, Stinger Grenade w/ Safety Clip Rubber Pellet RP, RP/CS, and RP/OC Specification Sheet (revised June 2020).

<sup>126</sup> Defense Technology, Stinger Grenade w/ Safety Clip Rubber Pellet RP, RP/CS, and RP/OC Specification Sheet (revised June 2020).

<sup>127</sup> Defense Technology, Stinger Grenade w/ Safety Clip Rubber Pellet RP, RP/CS, and RP/OC Specification Sheet (revised June 2020).

<sup>128</sup> DPD, Operations Manual § 115.01(4) (revised Oct. 4, 2019).

<sup>129</sup> Institute for Intergovernmental Research, *After-Action Assessment of the Police Response to the August 2014 Demonstrations in Ferguson, Missouri*, US Department of Justice Office of Community Oriented Policing Services, at 46 (2015).

<sup>130</sup> Charlie Mesloh, Jo Ann Webalis, Lindsey Medley, and Ross Wolf, *An Exploratory Study of Stingball Grenades*, at 15, 17 (2011).

<sup>131</sup> Charlie Mesloh, Jo Ann Webalis, Lindsey Medley, and Ross Wolf, *An Exploratory Study of Stingball Grenades*, at 18 (2011).

<sup>132</sup> Charlie Mesloh, Jo Ann Webalis, Lindsey Medley, and Ross Wolf, *An Exploratory Study of Stingball Grenades*, at 8-9 (2011).

<sup>133</sup> Defense Technology, Stinger Grenade w/ Safety Clip Rubber Pellet RP, RP/CS, and RP/OC Specification Sheet (revised June 2020).

<sup>134</sup> Defense Technology, Stinger Grenade w/ Safety Clip Rubber Pellet RP, RP/CS, and RP/OC Specification Sheet (revised June 2020).

<sup>135</sup> For example, one officer was a sergeant assigned to the Citywide Impact Team. Another was a lieutenant assigned to District 2.

<sup>136</sup> See, e.g., Defense Technology, Tactical Diversionary Device 6.5-Gram, Non-Reloadable and Non-Reloadable with Safety Clip Specification Sheet (revised June 2020); Defense Technology, Low Roll Distraction Device 12-Gram, Non-Reloadable (revised June 2020).

<sup>137</sup> Poornima Madhavan and Christian Dobbins, *Path Analysis of Human Effects of Flashbang Grenades*, Institute for Defense Analyses, at 1, 9, 19 (2018).

<sup>138</sup> Americans for Effective Law Enforcement Monthly Law Journal, *Civil Liability for Use of Distraction Devices Part 1*, at 101 (Feb. 2015).

<sup>139</sup> DPD, Operations Manual § 115.01(4) (revised Oct. 4, 2019).

<sup>140</sup> Americans for Effective Law Enforcement Monthly Law Journal, *Civil Liability for Use of Distraction Devices Part 2*, at 104 (Feb. 2015).

<sup>141</sup> Americans for Effective Law Enforcement Monthly Law Journal, *Civil Liability for Use of Distraction Devices Part 2*, at 102 (Feb. 2015).

<sup>142</sup> Americans for Effective Law Enforcement Monthly Law Journal, *Civil Liability for Use of Distraction Devices Part 2*, at 105 (Feb. 2015).

<sup>143</sup> Combined Systems, Flash-Bang, Mini-Bang Steel Body Single Use Specification Sheet (revised Mar. 2019).

<sup>144</sup> Impact projectiles can also be used to mark individuals for future identification and arrest, and to provide cover for officers making arrests. DPD, Crowd Management Manual, at 20 (revised Feb. 13, 2019).

<sup>145</sup> DPD, Crowd Management Manual, at 22-23 (revised Feb. 13, 2019).

<sup>146</sup> See, e.g., DPD, PepperBall Operator Certification Instructor Slides, at 59 (version 6.20).

<sup>147</sup> See, e.g., DPD, 40mm Operator Certification Instructor Slides, at 55 (version 6.20).

<sup>148</sup> IACP Law Enforcement Policy Center, *Crowd Management Concepts and Issues Paper*, at 7 (Apr. 2019).

<sup>149</sup> The Worcester Police Department Pepperball Policy is an example of policy that sets two standards. It describes the two distinct ways Pepperball can be used and dictates different standards that must be met for each use. In order to use Pepperball as direct fire, the target must be exhibiting “assaultive” behavior. This standard is similar to active aggression. Worcester Police Department, Policy and Procedure NO.400.4 (issued Apr. 13, 2007).

<sup>150</sup> DPD, Operations Manual § 105.01(14) (revised Jan. 27, 2019).

<sup>151</sup> The DPD uses two definitions of defensive resistance. In general, the DPD Use of Force Policy defines defensive resistance as “[p]hysical actions that attempt to prevent an officer’s control, including flight or attempt to flee but do not involve attempts to harm the officer (includes ‘turtling,’ which involves a pronated individual pulling his or her arms and/or legs to their chest to prevent access and control by an officer).” In a crowd control situation, defensive resistance is “[p]hysical actions by members of a crowd that constitute an unlawful assembly and/or disruption to pedestrian vehicle traffic.” The DPD Crowd Management Manual uses the general definition for defensive resistance, rather than the one specific to crowd control situations. We recommend that the DPD update the Crowd Management Manual to include the definition specific to crowd control situations. DPD, Operations Manual §§ 105.01(3)(d), 105.01(14) (revised Jan. 27, 2019); DPD, Crowd Management Manual, at 24 (revised Feb. 13, 2019).

<sup>152</sup> DPD, Operations Manual § 105.01(3)(e) (revised Jan. 27, 2019).

<sup>153</sup> Police Executive Research Forum, *The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned*, at 39 (2018).

<sup>154</sup> See Colorado Revised Statutes (“CRS”) § 24-33.5-713 (2018).

<sup>155</sup> Police Executive Research Forum, *The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned*, at 39 (2018).

<sup>156</sup> Police Executive Research Forum, *The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned*, at 44 (2018).

<sup>157</sup> Police Executive Research Forum, *The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned*, at 45 (2018).

<sup>158</sup> Institute for Intergovernmental Research, *After-Action Assessment of the Police Response to the August 2014 Demonstrations in Ferguson, Missouri*, US Department of Justice Office of Community Oriented Policing Services, at 89 (2015).

<sup>159</sup> See, e.g., Police Executive Research Forum, *The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned*, at 46 (2018); IACP Law Enforcement Policy Center, *Mutual Aid Concepts and Issues Paper*, at 10-16 (revised May 2007).

<sup>160</sup> IACP Law Enforcement Policy Center, *Mutual Aid Concepts and Issues Paper*, at 10-15 (revised May 2007).

<sup>161</sup> Letter from Independent Monitor Nicholas E. Mitchell to Denver Police Department Chief Paul Pazen (June 12, 2020) (attached as Appendix D).

<sup>162</sup> E-mail from Commander Jeffrey Martinez to Independent Monitor Nicholas E. Mitchell (July 16, 2020) (on file with author).

<sup>163</sup> See, e.g., Police Executive Research Forum, *The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned*, at 39 (2018); IACP Law Enforcement Policy Center, *Mutual Aid Concepts and Issues Paper*, at 10 (revised May 2007).

<sup>164</sup> IACP Law Enforcement Policy Center, *Crowd Management Concepts and Issues Paper*, at 3 (Apr. 2019); Police Executive Research Forum, *The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned*, at 40 (2018).



<sup>165</sup> IACP Law Enforcement Policy Center, *Crowd Management Concepts and Issues Paper*, at 3 (Apr. 2019).

<sup>166</sup> Police Executive Research Forum, *The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned*, at 39 (2018).

<sup>167</sup> Police Executive Research Forum, *The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned*, at 40 (2018); IACP Law Enforcement Policy Center, *Mutual Aid Concepts and Issues Paper*, at 10 (revised May 2007).

<sup>168</sup> Police Executive Research Forum, *The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned*, at 46 (2018).

<sup>169</sup> IACP Law Enforcement Policy Center, *Mutual Aid Concepts and Issues Paper*, at 10-16 (revised May 2007).

<sup>170</sup> IACP Law Enforcement Policy Center, *Mutual Aid Concepts and Issues Paper*, at 11 (revised May 2007).

<sup>171</sup> IACP Law Enforcement Policy Center, *Mutual Aid Concepts and Issues Paper*, at 12 (revised May 2007).

<sup>172</sup> IACP Law Enforcement Policy Center, *Mutual Aid Concepts and Issues Paper*, at 1 (revised May 2007).

<sup>173</sup> United States Department of Justice, Bureau of Justice Assistance, *Mutual Aid: Multijurisdictional Partnerships for Meeting Regional Threats*, at 1 (2005).

<sup>174</sup> United States Department of Justice, Bureau of Justice Assistance, *Mutual Aid: Multijurisdictional Partnerships for Meeting Regional Threats*, at 11 (2005); IACP Law Enforcement Policy Center, *Mutual Aid Concepts and Issues Paper*, at 23 (revised May 2007); Police Executive Research Forum, *The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned*, at 39 (2018).

<sup>175</sup> Letter from Independent Monitor Nicholas E. Mitchell to Denver Police Department Chief Paul Pazen (June 12, 2020) (attached as Appendix D); e-mail from DPD Commander Jeffrey Martinez to Independent Monitor Nicholas E. Mitchell (June 26, 2020) (on file with author).

<sup>176</sup> The MOU with Aurora Police Department included the requirements for that agency's use of the DPD training facility and contains no information on crowd management mutual aid. The DPD also provided an MOU with the Adams County Sheriff's Office, detailing a January 30, 2018 request from Adams County. The agreement includes a formal request for officers and equipment: "Pursuant to CRS section 29-5-103, I am formally requesting officers and equipment from your department to be temporarily assigned to the Adams County Sheriff's Office Patrol and/or Jail divisions for general law enforcement activities on Friday, February 2, 2018, from 0700 hours until 1900 hours."

<sup>177</sup> The Aurora Police Department signed the agreement on February 2, 2011.

<sup>178</sup> The University of Colorado, Denver Police Department signed the agreement on August 10, 2011.

<sup>179</sup> Police Executive Research Forum, *The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned*, at 39 (2018).

<sup>180</sup> The DPD provided a Mutual Aid Partner roster specific to May 29, 2020 and a general list of all the Mutual Aid Partners that provided support during the GFP. We report the 18 agencies that

were included in the general list of Mutual Aid Partners, but note that there were several agencies that appeared on the May 29, 2020 Mutual Aid Partner roster that did not appear in the general list provided by the DPD.

<sup>181</sup> The Denver Sheriff Department also provided assistance during the GFP, which primarily took the form of providing secure transport vans and assisting the DPD with security. The Governor approved deployment of the Colorado National Guard, which deployed to protect key municipal buildings in Denver.

<sup>182</sup> Some agencies provided mutual aid support as a multijurisdictional team. In these cases, the documents provided by the DPD addressed the team's combined aid in a single after-action report.

<sup>183</sup> For example, certain reports contained a relatively comprehensive description of actions taken by the Mutual Aid Partners and encounters with protesters, officer statements, and munitions used, while others contained only a roster of officers or a high-level summary of events.

<sup>184</sup> Police Executive Research Forum, *The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned*, at 46 (2018).

<sup>185</sup> Police Executive Research Forum, *The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned*, at 43, 47 (2018).

<sup>186</sup> IACP Law Enforcement Policy Center, *Crowd Management Concepts and Issues Paper*, at 3 (Apr. 2019).

<sup>187</sup> Police Executive Research Forum, *The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned*, at 48 (2018).

<sup>188</sup> DPD, Operations Manual § 105.01(1) (revised Jan. 27, 2019).

<sup>189</sup> At the time of the GFP, Colorado Revised Statutes stated that “a peace officer is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary.” CRS § 18-1-707 (2019).

<sup>190</sup> IACP Law Enforcement Policy Center, *Crowd Management Model Policy* § (IV)(E) (Apr. 2019).

<sup>191</sup> DPD, Operations Manual §§ 105.01(3)(e), 105.02(4)(d) (revised Jan. 27, 2019).

<sup>192</sup> The duty to intervene is now required by Colorado Revised Statutes. CRS § 18-8-802 (2020).

<sup>193</sup> IACP Law Enforcement Policy Center, *National Consensus Policy and Discussion Paper on Use of Force*, at 3 (revised July 2020).

<sup>194</sup> DPD, Operations Manual § 105.01(4)(c)(3) (revised Jan. 27, 2019).

<sup>195</sup> Ryan Osborne, *Aurora police issues five changes to department policy, including ban on carotid hold*, The Denver Channel (June 9, 2020).

<sup>196</sup> IACP Law Enforcement Policy Center, *Crowd Management Concepts and Issues Paper*, at 3 (Apr. 2019).

<sup>197</sup> Police Executive Research Forum, *The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned*, at 48 (2018).

<sup>198</sup> Police Executive Research Forum, *The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned*, at 43-44 (2018).

<sup>199</sup> Police Executive Research Forum, *The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned*, at 48 (2018).

- <sup>200</sup> Combined Systems, Model 3553 37mm 31 caliber Sting Ball Specification Sheet (revised Sept. 2018).
- <sup>201</sup> Combined Systems, Model 3553 37mm 31 caliber Sting Ball Specification Sheet (revised Sept. 2018).
- <sup>202</sup> Combined Systems, Model 3553 37mm 31 caliber Sting Ball Specification Sheet (revised Sept. 2018).
- <sup>203</sup> Civil Action No. 20-cv-1616-RBJ, City and County of Denver's Emergency Motion for Modification of Temporary Restraining Order, at 3 (2020) ("Denver also wants to correct the record where the Court states in its Order that the Denver Police Department has used rubber bullets during operations related to the protests. Denver does not use such munitions.").
- <sup>204</sup> Jefferson County Regional SWAT Team, After Action Review: Mutual Aid - Denver Police Department "March in Honor of George Floyd Protest," at 25.
- <sup>205</sup> Michele Coppola, *Using Shotguns as Less-Lethal Weapons*, TechBeat, United States National Institute of Justice (2018).
- <sup>206</sup> Mike Wood, *Why LE should keep the lethal shotgun*, Police1 (Dec. 21, 2018).
- <sup>207</sup> Jennifer Edwards Baker, *Cincinnati Police Sergeant Accidentally Grabs Wrong Ammo, Fires Shotgun Round at – but Does Not Hit – Armed Suicidal Man, Chief Says*, Fox19, (June 28, 2020); Maxine Bernstein, *Months After Portland Cop Mistakenly Shoots a Man With Live Rounds Loaded Into a Beanbag Shotgun, Bureau Has Yet To Make Changes*, The Oregonian, (Jan. 10, 2019); Michele Coppola, *Using Shotguns as Less-Lethal Weapons*, TechBeat, United States National Institute of Justice (2018).
- <sup>208</sup> Combined Systems, 12GA Super-Sock Bean Bag Specification Sheet, (2018).
- <sup>209</sup> Ken Hubbs, David Klinger, *Impact Munitions Data Base of Use and Effects*, 19-20 (Feb. 2004).
- <sup>210</sup> IACP Law Enforcement Policy Center, *Mutual Aid Concepts and Issues Paper*, at 10-12 (May 2007).
- <sup>211</sup> Federal Emergency Management Agency, *National Incident Management System Third Edition*, at 24 (Oct. 2017).
- <sup>212</sup> See, e.g., Police Executive Research Forum, *The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned*, at 49-53 (2018); IACP Law Enforcement Policy Center, *Crowd Management Model Policy* § (IV)(B)(2) (Apr. 2019).
- <sup>213</sup> IACP Law Enforcement Policy Center, *Crowd Management Model Policy* § (IV)(B)(3)(a), at 2 (Apr. 2019).
- <sup>214</sup> Federal Emergency Management Agency, *National Incident Management System Third Edition*, at 25 (Oct. 2017).
- <sup>215</sup> IACP Law Enforcement Policy Center, *Incident Command System Model Policy*, at 3 (2009).
- <sup>216</sup> Federal Emergency Management Agency, *National Incident Management System Third Edition*, at 28 (Oct. 2017).
- <sup>217</sup> IACP Law Enforcement Policy Center, *Incident Command System Model Policy*, at 3 (2009).
- <sup>218</sup> IACP Law Enforcement Policy Center, *Incident Command System Model Policy*, at 3 (2009).

<sup>219</sup> DPD, OMS 108.08, Crowd Management Policy §§ (5)(b-e) (revised Jan. 2006); DPD, Crowd Management and Control Manual, at 12 (effective Feb. 13, 2019).

<sup>220</sup> City and County of Denver, P25 Public Safety Radio System Replacement Project, Lease Purchase and Hardware Agreement, Proposed System Technology § 2.1.1.1.1 (June 1, 2017).

<sup>221</sup> City and County of Denver, P25 Public Safety Radio System Replacement Project, Lease Purchase and Hardware Agreement, Proposed System Technology 2.1.1.8.3 (June 1, 2017).

<sup>222</sup> IACP Law Enforcement Policy Center, *Crowd Management Concepts and Issues Paper*, at 9 (Apr. 2019); Police Executive Research Forum, *The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned*, at 30 (2018).

<sup>223</sup> Police Executive Research Forum, *The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned*, at 37 (2018); Police Foundation, *Managing Large-Scale Security Events: A Planning Primer for Local Law Enforcement Agencies*, at 8, 25, 47 (Apr. 2018).

<sup>224</sup> Police Executive Research Forum, *The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned*, at 37-38 (2018).

<sup>225</sup> Police Executive Research Forum, *The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned*, at 37-38 (2018); IACP Law Enforcement Policy Center, *Crowd Management Concepts and Issues Paper*, at 9 (Apr. 2019).

<sup>226</sup> Police Executive Research Forum, *The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned*, at 31-32 (2018).

<sup>227</sup> IACP Law Enforcement Policy Center, *Mutual Aid Concepts and Issues Paper*, at 10-12 (revised May 2007).



**Appendix A**  
**Letter from Denver City Council**



*City and County of Denver*  
CITY COUNCIL

June 5, 2020

Independent Monitor, Nick Mitchell

Executive Director of Public Safety, Murphy Robinson

Chief of Police, Paul Pazen

Gentlemen,

During the last days of May and first week of June, prompted by the murder of George Floyd in Minneapolis, numerous large public gatherings took place in downtown Denver including the state Capitol grounds, Civic Center and the area surrounding the City and County Building. In the course of these events crowd activity spilled over into other parts of Downtown, the Colfax Avenue corridor and surrounding neighborhoods.

The Denver Police Department was tasked with providing crowd control and public safety for these events, partnering with a number of other law enforcement agencies to assist in carrying out these duties.

Numerous news accounts and public complaints have surfaced alleging excessive use of force by Denver Police Department personnel.

Mr. Mitchell, in line with your charge to provide oversight of Denver's public safety agencies, we request that you undertake an in-depth analysis and review of Denver Police Department's exercise of their duties at the above-mentioned demonstrations. Please focus, among other things, on DPD's Use of Force policy and other relevant policies and procedures; the use of various forms of "riot" gear and equipment, chemical agents, rubber bullets and other crowd control measures; and DPD's handling of community complaints made regarding officer conduct at the demonstrations.



*City and County of Denver*  
CITY COUNCIL

Mr. Robinson and Chief Pazen, we ask for your cooperation in making all relevant personnel and documents available to assist Mr. Mitchell and his staff in fulfilling the above request.

Respectfully,

Handwritten signature of Paul Kashmann in cursive.

Paul Kashmann - Denver City Council, District 6  
Chairman, Safety Committee

Handwritten signature of Jamie Torres in cursive.

Jamie Torres – Denver City Council, District 3  
Co-Chair, Safety Committee

Handwritten signature of Kevin Flynn in cursive.

Kevin Flynn – Denver City Council, District 2  
Member, Safety Committee

Handwritten signature of Robin Kniech in cursive.

Robin Kniech – Denver City Council, At-Large  
Member, Safety Committee

Handwritten signature of Amanda Sandoval in cursive.

Amanda Sandoval – Denver City Council, District 1  
Member, Safety Committee





*City and County of Denver*  
CITY COUNCIL

Amanda Sawyer – Denver City Council, District 5  
Member, Safety Committee

Jolon Clark – Denver City Council, District 7  
Council President

Stacie Gilmore – Denver City Council, District 11  
Council President Pro-Tem

Kendra Black – Denver City Council, District 4

Candi CdeBaca – Denver City Council, District 9

Chris Herndon – Denver City Council, District 8

Chris Hinds – Denver City Council, District 10

Deborah Ortega – Denver City Council, At-Large

**Appendix B**  
**Letter from Councilwoman CdeBaca**



*Candi CdeBaca*  
COUNCILWOMAN DISTRICT 9

*City and County of Denver*  
CITY COUNCIL  
City and County Building  
1437 Bannock Street, Room 451  
Denver, CO 80202  
p: 720.337.7709  
District9@denvergov.org

June 2, 20202

Nicholas Mitchell, Independent Monitor  
Office of the Independent Monitor  
101 W. Colfax Ave., Suite 100  
Denver, CO 80202

Murphy Robinson, Director of Safety  
Department of Public Safety  
331 Cherokee Street, Room 302  
Denver, CO 80204

Dear Mr. Mitchell and Director Robinson:

We, the undersigned, call on the Office of the Independent Monitor and Department of Public Safety to investigate accounts from bystanders, protesters and journalists who were injured by Denver police officers during the protests that have taken and are taking place in Denver in response to the killing of George Floyd in Minneapolis.

We are also formally requesting that Safety Director Murphy Robinson provide a public report examining the militarized police presence, where numerous law enforcement agencies from surrounding counties, as well as the National Guard, were called in.

In his press briefings, DPD Chief Paul Pazen supported the deployment of "less-lethal" weapons such as tear gas, pepperballs, and incendiary devices, but he has failed to address the harm caused to civilians by these methods, nor has he provided to the public their number of injuries.

Protests against police abuse should not result in more police abuse. It appears that once the decision was made to shut down the protests, everyone present was targeted with the same level of violence, resulting in injuries, some requiring emergency care. At the very least, the excessive police response has caused trauma to an already traumatized and grieving community. Specifically, we are calling for an investigation into the following activities:

- How, when and where pepper spray, rubber bullets, tear gas, and a logging process to track frequency of use by which officers; the environmental impact, including issues raised in [this Harvard study](#), and how bystanders, including those living in the area, were impacted.
- The use of military vehicles, including which partner agencies brought them, and for what specific purposes.
- An explanation about why [journalists were targeted](#), even though they were clearly identified as members of the press.
- The number of reported civilian injuries, including the type of injuries, the manner caused, and location where these injuries occurred.



*Candi CdeBaca*  
COUNCILWOMAN DISTRICT 9

*City and County of Denver*  
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- Alternative methods that should have been provided for free speech expression when the curfew was imposed.

Our message to the City's administration is clear: If you really wish to honor George Floyd's memory, then STOP POLICE BRUTALITY by beginning with your own police force. A thorough investigation and public accounting of the impacts of these policies are essential to restoring the public's trust and protecting our communities from police violence going forward.

Signed,

Councilwoman Candi CdeBaca  
Denver City Council, District 9

9to5 Colorado  
Abolish ICE Denver  
ACLU of Colorado  
Colorado Latino Forum  
Denver Democratic Socialists of America  
Denver Area Labor Federation  
Denver Justice Project  
FreeMusicForFreePeople  
Greater Kingdom Fellowship International, Inc.  
Harm Reduction Action Center  
Hope Tank  
Indivisible CO-5  
Indivisible Denver CD1  
kindColorado  
New Nation Church  
Our Voice Our Schools  
R.K.L. Lending and Financial Services  
Regan Byrd Consulting  
Seasoned With Grace  
The AMP-athy Project  
The Indigenous Agency  
The Kaleidoscope Project  
The Weekly Issue El Semanario  
titwrench Collective  
Unite North Metro Denver  
Warm Cookies of the Revolution  
Women's Lobby of Colorado

Write Now  
Communications  
Inc.  
Yellow Scene  
Magazine  
Alison Coombs  
Juan Marcano  
Jessica Abell  
Amalthea Aelwyn  
Fran Aguirre  
Ahmed Almutawa  
Katura Alwyn  
Leah Anthony  
Lauren Arnke  
Kristin Axley  
Kristen Baird  
Hayley Banyai-Becker  
Gabe Barnard  
Victoria Barriga  
Elise Beall  
Terin Blake  
Diego Bleifuss  
Prados  
Roshan Bliss  
Margaret Bobb  
Daniel Bonucci  
April Bowen  
Allison Brown  
Nicholas Bunce

Deborah V. Burgess  
Liam Buschel  
Regan Byrd  
Rosario C. de Baca  
John Cameron  
Pamela P. Carter  
Germany  
Janet Caspers  
Zachary Cheikho  
Helenna Chun  
Sandra Claus  
Eve Cohen  
Ronald Cole  
Rhonda Coleman  
Benjamin Combs  
Kim Conrad  
Anna Crawford  
Lisa Culpepper  
Marc Davis  
Chris Davis  
Robert Davis  
Teresa Dickinson  
Chris Diehn  
Joshua Downey  
Johnathen Duran  
Daniel Ebeling  
Benjamin Efram  
Lisa Escarcega  
Rafael Espinoza  
Shawn Fausett



*Candi Cde Baca*  
COUNCILWOMAN DISTRICT 9

*City and County of Denver*  
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Sue Felton  
Lisa Marie Fertman  
Bishop Foreman  
Chris Fresquez  
Daniel Fritz  
Bobbette Furer  
Xochitl Gaytan  
Maria Gaytan  
Helen Giron  
Tanya Given  
Lindsey Glover  
Raffi Greenberg  
Daniel Grosso  
Cesiah Guadarrama Trejo  
Brittany Hagood  
Maria Heymans  
Janessa Ho  
Melanie Horton  
Troy Hubbell  
Christina Ibanez  
Ryan Ingram  
Sam Jarris  
Samantha Jimenez  
Cayenna Johnson  
Jayne Johnson  
Cassandra Johnson  
Melissa Jones  
Loni Jones  
Deana Kamm  
Maggie Kantor  
Kate Kelly  
Patrick Kelsall  
Yoal Kidane Ghebremeskel  
Jonathan Lamar  
Patty Lampman  
Athena Landy  
Bradley Laurvick  
Eliav Levy  
Peter Loewi  
Gregory Lohrke  
Mona Magno  
Michael Mansuy  
Carol March  
Taryn Martin  
Mike McDaniel  
Colin McIntosh

Autumn Mechtly  
Angelo Mendez  
Stephen Meswarb  
Stephani Meyers  
Dana Miller  
Matt Miller  
Rachel Monserrate  
Veronica Montoya  
Cory Montreuil  
Jay Morse  
Kimberly Morse  
Tanya Mote  
Kevin Mullan  
Jennifer Nahulu  
Dr. Eric D. Nelson  
Lindsay Nerad  
Scott Niblack  
Lucia Nisly  
Dana Nobles  
Marlon Nunez  
Naomi Ochoa  
Confidence Omenai  
Michaela Owens  
Eric Parker  
Oneda Patterson  
Olivia Perez  
Kelly Perez  
Michaela Perez  
Dylan Perito  
Meredith Phillips  
Rocky Piro  
Maximilian Popiel  
Arthur Porter  
Jennifer Portillo  
Aaron Pott  
Vanessa Quintana  
Elina Rodriguez  
Lisa Raville  
Hamilton Reed Zemek  
Jody Rein  
Alyssa Rich  
Laura Richards  
Erika Righter  
Diana Rivero  
Rebecca Robidoux  
Dave Robinson

John Ronquillo  
Andy Sannier  
Christopher Savin  
Sheryl Schmatjen  
Amy Schneider  
Meg Schomp  
Jacque Scott  
Kristen Seidel  
Sara Sheiner  
Jeri Shepherd  
Kim Shively  
Jacqui Shumway  
Sarah Slater  
Oak Slater  
Sheila Smith  
Molly Snook  
Aletha Spang  
Scott Stelzriede  
Dwayne Taylor  
John Tellis  
Gabriel Thorn  
James Thornton  
Diane Tipton  
Timothy Tyler  
Chinelo Tyler  
Ashish Vaidya  
Troy Valentine  
Tyler Van Kirk  
Tania Van Pelt  
Jeremy VanHooser  
Greg Verzosa  
Bridget Walsh  
Morgha Weber  
Mitchell Weldon  
Morgan Whatley  
David Whitmore  
Tiana Yepes  
Kristi Zaragoza

**Appendix C**  
**Letter from the Office of the Independent  
Monitor to City Council**

Office of the Independent Monitor



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June 11, 2020

**Re: OIM Investigation into DPD Approach to George Floyd Demonstrations**

Dear Councilmembers:

I write in response to your letters dated June 2 and 5, 2020, requesting that the Denver Office of the Independent Monitor (“OIM”) conduct an investigation that examines the Denver Police Department’s (“DPD”) approach to the demonstrations held in response to the recent murder of George Floyd in Minneapolis, Minn. You have asked that we evaluate, among other things, the DPD’s use of physical force, chemical agents, riot gear, and surplus military equipment, as well as its handling of community complaints regarding alleged officer misconduct during the demonstrations.

We accept.

As you know, the OIM provides oversight of the DPD through the review of internal investigations, disciplinary proceedings, and policies and practices in that agency. Given the length of the demonstrations in our city, conducting this investigation will require us to review hundreds (if not thousands) of hours of HALO and body-worn-camera footage, radio transmissions, and community generated video, digest a large volume of documentary evidence, and interview command staff, line officers, and community members. While I expect the investigation to be time and labor intensive, I assure you that our small staff will move expeditiously, and we have already drafted our first request for documents and information, which we will issue to the DPD shortly.

Thank you for your trust in us to do this essential work. I am gratified by the pledge of complete cooperation from Executive Director Robinson and Chief Pazen, and I look forward to collaborating with them and their teams as we conduct this review. I will keep you apprised of our progress in the weeks and months ahead.

Respectfully,

Nicholas E. Mitchell  
Independent Monitor

cc: Alan Salazar, Chief of Staff  
Murphy Robinson, Executive Director of Public Safety  
Paul Pazen, Chief of Police  
Citizen Oversight Board Members

**Appendix D**

**Letter from the Office of the Independent Monitor  
to the Denver Police Department**



Office of the Independent Monitor



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Murphy F. Robinson, Executive Director  
Department of Safety  
1331 Cherokee Street  
Denver, CO 80202

Paul M. Pazen, Chief of Police  
Denver Police Department  
1331 Cherokee Street  
Denver, CO 80202

June 12, 2020

**Re: OIM Review of DPD Approach to George Floyd Demonstrations**

Dear Director Robinson and Chief Pazen:

I write in response to your letter dated June 5, 2020, supporting the Denver City Council's request that the Denver Office of the Independent Monitor conduct a review that examines the Denver Police Department's ("DPD") approach to the demonstrations held in response to the recent murder of George Floyd in Minneapolis, Minn. I look forward to collaborating with you and your teams on this important project.

To further our review, I respectfully request access to records and information from within the DPD. I have attached to this letter Appendix A, "**First Request for Documents and Information in the OIM's George Floyd Protest Investigation.**" I would appreciate your assistance in providing this material as expeditiously as possible, on a rolling basis, so that we may begin our work. Please let me know if you have any concerns and, again, my thanks for your collaboration and assistance.

Respectfully,

Nicholas E. Mitchell  
Independent Monitor

cc: Alan Salazar, Chief of Staff  
Citizen Oversight Board Members

**Appendix A:**

**First Request for Documents and Information in the OIM's George Floyd Protest Investigation**

1. All versions of DPD's Crowd Management Manual in effect from 2010-present.
2. An inventory of all surplus military equipment, whether acquired through the Federal 1033 Program or other means, in the possession of the DPD, and any associated acquisition records.
3. Access to all video footage from the protests, including but not limited to:
  - a. Access to Evidence.com to review body-worn-camera ("BWC") video.
  - b. All helicopter, HALO camera, and Rapid Deployable Camera footage from the area of the protests.<sup>1</sup>
  - c. Video or audio recordings of each order to disperse the crowd given during the protests, per the Crowd Management Manual.<sup>2</sup>
4. All documentation of police radio communication for each protest day, including but not limited to:
  - a. A list of all radio channels used by DPD officers and officers from regional and federal law enforcement agencies that provided assistance to the DPD (hereafter, "Law Enforcement Partners").
  - b. CAD transmissions and reports.
  - c. Complete audio recordings of each channel used.
  - d. A dataset of all calls for service related to the protests, including the call type, location, involved officers, and eventual call disposition.
5. All documentation that reflects the DPD's planning and after-action reporting for each protest day, including but not limited to:
  - a. Operational Plans and any associated documentation.<sup>3</sup>
  - b. All staffing rosters and assignment records for all officers deployed to the protests.
  - c. Traffic Management Plans and any associated documentation.<sup>4</sup>
  - d. Inventory of all vehicles, equipment, munitions, or weapons deployed.
  - e. All after-action or similar reports.
6. Documentation of/from all Law Enforcement Partners that supported the DPD's crowd control efforts, including but not limited to:
  - a. A list of all Law Enforcement Partners that supported the DPD during the protests.
  - b. Documentation of the support that each Law Enforcement Partner provided, including a list of vehicles, equipment, munitions, and weapons each agency used (e.g., drones, flash bang and sting ball grenades, Tasers, and PepperBall Systems, etc.).
  - c. Rosters of all officers deployed from each Law Enforcement Partner with an identification of which officers were equipped with BWCs.
  - d. Any written agreements or memoranda of understanding between the DPD and its Law Enforcement Partners to provide crowd control assistance to the DPD.
  - e. Documentation of any payments or agreements to make payments to Law Enforcement Partners for their involvement in the DPD's crowd control efforts.

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<sup>1</sup> DPD Operations Manual Section 119.01 (effective June 6, 2020).

<sup>2</sup> DPD Crowd Management Manual, at 13-14 (effective Feb. 13, 2019).

<sup>3</sup> DPD Crowd Management Manual, at 5-6 (effective Feb. 13, 2019).

<sup>4</sup> DPD Crowd Management Manual, at 5-6 (effective Feb. 13, 2019).

- f. Use of force policies for all Law Enforcement Partners.
- 7. Documentation of all uses of force and injuries during the protests, including but not limited to:
  - a. All use of force reports.
  - b. Any reports of injury to DPD officers.
  - c. Any reports of injury to community members.
- 8. All documentation of permits submitted, if any, for the George Floyd protest activity.
- 9. All documentation associated with arrests made and citations issued as a result of the protests, including but not limited to:
  - a. All arrest reports and citations.
  - b. Datasets aggregating citation and arrest data.





Office of the Independent Monitor  
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EXHIBIT 2 to Complaint and Jury Demand

**Department of Safety**  
**Murphy Robinson, Executive Director**



1331 Cherokee Street, Room 302  
Denver, CO 80204  
p: 720.913.6020

To: Paul Pazen, Chief of Police

From: Murphy Robinson, Executive Director of Safety

Re: Concerns Related to the Use of Less Lethal Force During Protest Activities

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As discussed earlier today, it has recently been brought to my attention that some of the people engaged in recent protest activities have been seriously injured by sponge-tipped rounds fired by 40mm launchers and pepper balls. The nature of the injuries being reported in recent days has made me concerned and I want to ensure steps are being taken immediately to insure no further injuries occur.

I request that you immediately consider prohibiting the use of 40mm launchers during any upcoming protest activities against any individual who is present in a crowd of people. I also request that an internal review be initiated to determine whether future use of the 40mm launcher should continue for crowd control purposes. Finally, I ask that you ensure that all DPD officers authorized to use the PepperBall system are reminded of their training regarding the use of pepper balls, including that they are to ensure that innocent persons are not struck unintentionally and that pepper balls should be fired at the ground, not into a crowd of protestors.

I look forward to hearing the results of your internal review and working together with you to ensure that we are proactively making necessary changes to DPD's use of force policies to ensure that peaceful protestors are not significantly harmed when crowd control techniques need to be utilized.

**EXHIBIT 3 to Complaint and Jury Demand**

A North Denver News report issued in 2014 found that Denver had one of the highest rates of death caused by legal intervention in the nation, second only to Baltimore. In recent years, the City paid out well more than \$17 million as a result of either jury verdicts or settlements based upon violations of the Fourth Amendment to the United States Constitution. Further, in the period between 2004 and September 2016, the City expended nearly \$28 million in settlements of lawsuits involving police officers, as reported by the Denver Post article dated April 20, 2017, which used data provided by the Denver City Attorney's office.

The following cases/claims involve allegations of the use of excessive force (some lethal, others non-lethal) by Denver Police Officers. They are not exhaustive in scope, but they illustrate a persistent custom, policy, and practice that has condoned the use of excessive force for more than a decade. Many of these cases resulted in the City's payment of a settlement to the aggrieved parties. Others went to trial and resulted in a verdict in favor of the plaintiffs. Still others represent the City's ratification and perpetuation of its officers' use of excessive force or other unconstitutional conduct by refusing to prosecute or take other appropriate disciplinary action against the offending officers.

- a. In 2015, Denver Police shot and killed Paul Castaway with little intervention to de-escalate the situation. As is custom, the officer involved was not prosecuted.
- b. In 2015, Denver Police shot and killed Jessica Hernandez who was in a vehicle reported stolen with other teens in the vehicle. There were no weapons present. The officers involved all shot at the vehicle eight times and were not charged by the Denver District Attorney. The City paid a \$1,000,000 settlement to the Hernandez family after the family claimed Denver Police used excessive force.

- c. In 2015, Denver Police shot Sharod Kindell during a traffic stop in which Denver Police forced Mr. Kindell out of the vehicle. Denver Police shot Mr. Kindell as he fled unarmed. No officer was prosecuted or disciplined for their role in the shooting.
- d. In 2014, Denver Police shot Joel and Carlos Jurado through a vehicle's window after a pursuit. The same officer who went on to shoot Sharod Kindell also shot at the Jurados as they started to drive away. The individuals in the car were unarmed, and the involved officers were not disciplined.
- e. In 2014, Denver Police shot Joseph Valverde during a sting operation. Upon disarming himself and obeying commands, Denver Police shot and killed Mr. Valverde while his hands were raised in the air. The DPD released an immediate statement that the shooting was justified. The officer who shot Mr. Valverde made numerous false statements which were contradicted by the video evidence. The officer was not disciplined and was given an award. The officer was not prosecuted despite evidence that he unlawfully killed Mr. Valverde.
- f. In 2009, Vicki Lynn Trujillo filed a lawsuit against Denver Police and The City for pursuing Jason Gomez without probable cause or suspicion. Mr. Gomez was unnamed and shot in the back, perforating his spinal cord, after he initially stopped for the officer's commands. Mr. Gomez was then shot multiple times after the initial shot and was hit in his chest, abdomen, thigh, and knee. Mr. Gomes later died from multiple gunshot wounds. The case was settled for \$190,000.
- g. In 2015, Altagracia Medina Valencia filed a lawsuit on behalf of her deceased husband whom Denver Police shot and killed after they were called for a self-inflicted knife wound. Officers tased Mr. Valencia-Lopez, and he dropped the knife. The officers then



shot him to death in front of his entire family. The case was settled for an undisclosed amount.

- h. In 2006, Denver Police shot and killed Frank Lobato after they entered his home without a warrant looking for another individual. Mr. Lobato was sleeping in his bed and was unarmed. Denver Police entered his room as he slept and shot and killed him. The case was settled for \$900,000.
- i. In 2004, Denver Police shot and killed Paul Child, a fifteen-year-old who had special needs. The officers who responded to a call that Mr. Child was holding a knife, shot and killed Mr. Child through the front door of his home while Mr. Child stood in a hallway. Other officers on the scene had less lethal tasers, but they were not used. Officers had been informed that Mr. Child had “special needs.” The case was settled for \$1.32 million.
- j. In 2004, Denver Police shot and killed Gregory Lee Smith, Jr., for holding a three-inch knife in his home after officers responded to a domestic call. The case was settled for an unknown amount.
- k. In 2010, Marvin Booker was killed in the Denver jail. Officers involved in the killing of Mr. Booker took steps to cover up the murder by having meetings before speaking to investigators and hiding the taser used to kill Mr. Booker. A federal jury returned a verdict against the deputies involved, their Sergeant, and the City for violating Mr. Booker’s civil rights. The jury determined the death of Mr. Booker was willful, intentional, and malicious and awarded the family \$4.65 million, of which \$4.5 million was for punitive damages. Denver never disciplined the officers or their supervisors who were involved in the death of Mr. Booker. In the Booker case, Denver stipulated

that the individual officers involved acted pursuant to policies and customs of the City which created Section 1983 liability for The City.

- l. In 2015, Michael Marshall was killed at the Denver jail when officers used excessive force by piling on top of him, causing him to vomit and go into cardiac arrest. Officers then put a spit mask on Mr. Marshall causing him to choke and die on his own vomit. The autopsy ruled that the cause of death was due to asphyxiation and blunt force trauma to the face. The City settled the case for \$4.65 million. Officers involved received little punishment for the incident.
- m. Plaintiffs in *Ortega, et al, v. City and County of Denver, et al.*, 944 F.Supp. 2d 1033 (D. Colo. 2013) demonstrated that Denver officers used excessive force because of the City's inadequate training of officers on the use of force; failure to investigate complaints against officers; and custom of tolerating officers' "code of silence" when force is used.
- n. In 2019, Denver Police officers beat Justin Lecheminant in his backyard after driving away from a traffic stop. Officers broke his nose and multiple ribs, punctured his eardrum, and gave him a serious concussion.
- o. In 2017, Denver Police pulled over Kristyn Stonkas and then beat her and her partner, Mr. Steele, after the couple yelled at the officers. Denver Police caused Ms. Stonkas to suffer a traumatic brain injury and torn vertebrae while also causing Mr. Steele a traumatic brain injury, collapsed lung, and broken rib. The City settled the case before it was ever filed in court for \$500,000.
- p. In 2016, Denver Police tased and beat a homeless man, Gregory Heard, despite the fact that he was complying with the officers' commands. An officer tased Mr. Heard,

pushed him to the ground then shoved his face into the dirt. The Investigating Supervisor on scene, the same officer who tased Mr. Heard, knowingly prepared a false use-of-force report to cover up their actions. Denver Police determined that the officer's conduct was consistent with the policy of the department.

- q. In 2014, a Denver Police officer was fired for putting his knee into the neck of Servina Trujillo while in her cell. The City settled the excessive force lawsuit.
- r. In 2014, a Denver Police officer with at least nine excessive force complaints against him assaulted Brandon Schreiber at a bar and tore both of his rotator cuffs. The case was settled for \$185,000.
- s. In 2013, Denver Police responded to a gas station where the owner, Bill Dau, reported a customer who tried to cash a bad money order a few days after the same customer did the same thing. When officers responded, they struggled to communicate with Mr. Dau. Officers then rushed and tackled Mr. Dau and placed him in handcuffs. Mr. Dau was charged with Second Degree Assault and Criminal Extortion, but the charges were later dropped. The City settled the case in 2016 for \$50,000.
- t. In 2012, Philip White, who is a blind 77-year-old man, was beaten by a Denver Police officer at a bus station. The officer slammed Mr. White's head into a machine causing a bloody gash on his head and then placed handcuffs too tightly on Mr. White. Denver Police found the officer did not violate the department's policy and did not use excessive force. A federal jury concluded that the officer did in fact use excessive force and awarded Mr. White \$400,000; \$100,000 in compensatory damages and \$300,000 in punitive damages. The City also paid hundreds of thousands of dollars in attorney fees.

- u. In 2011, the Martinez family filed suit against the Denver Police for entering their home without a warrant or consent and then beating members of the family, including pushing a family member through a window, punching another member in the face without provocation, and dragging another family member from the home and slamming them on the concrete before applying handcuffs. Members of the family were charged criminally, but a jury acquitted two of them on all counts while the charges against the other two were dropped. A federal jury awarded the family \$1.8 million in a civil lawsuit.
- v. In 2011, during a routine traffic stop of Alexander Landau, Denver Police handcuffed his passenger, Addison Hunold, for possessing a small amount of marijuana. Officers then began searching Mr. Landau's vehicle and tried to get into the trunk of the car. When Mr. Landau asked the officers if they had a warrant to search the trunk, they grabbed Mr. Landau's arms and beat him in the face with their fists and a flashlight while yelling racial epithets. After EMTs arrived on scene and found Mr. Landau lying on the ground and bleeding from the head, he was treated at the hospital for a broken nose, lacerations, serious closed head injuries, hematoma, concussion, and a hemorrhage in his eye. Officers on scene forced an eyewitness to sign a false statement and filed it with their reports. No officers were disciplined for this incident. The City settled this case for \$795,000.
- w. In 2010, Jared Lunn tried to report an assault to a Denver Police officer who then ignored him. When Mr. Lunn muttered, "way to protect and serve," as he tried to get back into a vehicle, the officer grabbed Mr. Lunn, choked him unconscious, kicked his legs out from underneath him, slammed him onto the ground, and yelled homophobic

slurs at him. Mr. Lunn was not cited for any violation of law. The City settled this case for \$45,000.

- x. In 2010, Rohit Mukherjee was beaten by Denver Police who responded to Mr. Mukherjee's home while he was hosting a party. Denver Police pushed open the door when Mr. Mukherjee would not come outside, grabbed him, slammed him on the floor, stood on his legs, pushed his face into the carpet so hard it caused visible injuries, and slammed his head into walls as they walked him out of the building. Mr. Mukherjee's guests attempted to film the assault at which point one of the officers took their phones and dumped them in a bowl of water to destroy the evidence. The City settled the case for an undisclosed amount.
- y. In 2010, Denver Police officers jumped Chad Forte in his apartment building for allegedly jaywalking. The attack left him with facial injuries. Denver settled this case for \$22,500.
- z. In 2010, Robert Duran sued the City for excessive force when deputies beat him in the detention center while he was waiting for the elevator. A deputy slammed Mr. Duran's head in the wall, dragged him ten feet, handcuffed him, then kicked in him his face and body. Mr. Duran won a jury trial for this incident and was awarded \$40,000 plus interest and over \$217,000 in attorney's fees.
- aa. In 2010, Tyler Mustard was chased, beaten in the head, neck, and body, and charged for spray-painting a van. The charges against Mr. Mustard were dismissed. Denver settled the case for \$117,000.
- bb. In 2010, Denver Police followed John Crespino home after he witnessed officers using excessive force on a group of children. An officer kicked Mr. Crespino's legs out from

- under him, placed him in a chokehold, handcuffed him, then beat him with batons for roughly fifteen to twenty minutes. The case settled for an undisclosed amount.
- cc. In 2010, Denver Police beat Eric Winfield causing chipped teeth, scars, and nerve damage in his hands. Denver settled the case for \$40,000.
- dd. In 2010, Denver Police beat James D. Moore, whom officers were told was the wrong guy at the scene. An officer tackled Mr. Moore from behind without warning or provocation. The officer then proceeded to beat Mr. Moore to the point that he lost consciousness and his heart stopped. The officer continued to beat him even after he was restrained. Mr. Moore suffered life-long injuries and now walks with a cane. The City settled this case in 2015 for \$860,000.
- ee. In 2009, Denver Police beat Mark Ashford who told an officer he would testify that he saw a car stop at a stop sign after the officer had just pulled over the vehicle for not stopping. The officer grabbed Mr. Ashford's phone while he took photos of the scene and then started punching Mr. Ashford to get him on the ground. Mr. Ashford had to be taken from the scene by ambulance. He was charged with several crimes which were later dismissed. In 2011, The City settled the excessive force case for \$35,000.
- ff. In 2009, Alberto Romero ultimately died after he was repeatedly tased and beaten by Denver Police when they arrested him wearing only boxer shorts. Before he died, Mr. Romero suffered broken ribs and a split tongue from the excessive force. The City settled the case with his family for \$225,000.
- gg. In 2009, a Denver Police officer struck Danvis Smith in the face through the window of Mr. Smith's vehicle. The officer then pulled Mr. Smith from the vehicle and handcuffed him in a position that caused a torn rotator cuff, torn bicep tendon, and

chronic back pain. Mr. Smith was charged with several crimes which were later dismissed. The City settled this case for undisclosed amount.

hh. In 2009, Denver Police forcefully entered the home of James B. Bouchard without a warrant or consent. Officers restrained Mr. Bouchard with a nightstick, shoved him into a wall, and handcuffed him resulting in injuries to his rotator cuff and his torso. This case settled before trial.

ii. In 2009, Denver Police responded to a diner where a woman had been assaulted in the bathroom. The victim of the assault along with three other women were then assaulted by Denver Police officers. The officers maced all the women, handcuffed them, then proceeded to further brutalize two of the women who were handcuffed. In an effort to conceal the excessive force, the City prosecuted the women. No officer was criminally prosecuted or fired. The City settled the case for \$360,000.

jj. In 2009, while Wayne C. Rose was unarmed and attempting to flee, he was knocked over by one Denver officer on foot and then run over by another officer on a motorcycle. Mr. Rose was knocked unconscious, placed in handcuffs, and then picked up by his arms which were behind his back. Officers dropped Mr. Rose onto the pavement several times causing injuries to his face and body. He was then kicked repeatedly. Mr. Rose suffered a broken arm and had to have multiple surgeries. This case settled for an undisclosed amount.

kk. In 2009, James R. Watkins was beaten by Denver Police who were following him. Officers hit him in the face with closed fists and their elbows. Officers continued to beat Mr. Watkins after he was restrained. Mr. Watkins was initially charged with Assault in the Second Degree, but the charges were later dismissed. The City settled

- this case for \$20,000.
- ll. In 2009, Denver Police beat Michael DeHerrera for calling his father, a Pueblo Police Officer, to inform him that Denver Police were assaulting his friend. Denver Police then beat Mr. DeHerrera by slamming him face first to the concrete, using an impact weapon on him multiple times, and striking him in the face multiple times. Despite the incident being caught on video, the officers were only briefly terminated by the Manger of Safety based on their excessive force and false reports, but then later reinstated. This case settled for \$17,500.
- mm. In 2009, Shawn Kyeone called the Denver Police to report being assaulted by a bouncer at a night club. When officers arrived, they too began to assault Mr. Kyeone by hitting him with closed fists and elbows in the face even after he was restrained. Mr. Kyeone suffered head trauma and facial contusions. Denver settled this case for \$15,000.
- nn. In 2009, Jason Anthony Graber was called a “dumbass” by Denver Police in a marked squad car while he and his family were trying to cross the street at the 16<sup>th</sup> Street Mall. Mr. Graber told the officer he did not appreciate being called names, so the Denver Police officer got out of the squad car, tackled Mr. Graber and then slammed his body down on the concrete causing knee and leg injuries. Mr. Graber was detained for public intoxication with a blood alcohol level of 0.036 (well below the legal limit). Mr. Graber suffered long-term injures to his knee and leg. The judge in this case determined that Denver impeded the discovery process by refusing to produce use-of-force documents for Denver police personnel. In 2011, the case settled for \$225,000.
- oo. In 2009, John Stephen Heaney was assaulted by an undercover Denver Police officer



- while riding his bike near Coors Field on opening day. The officer forced Mr. Heaney to the ground, punched him repeatedly in the head, and slammed his head on the pavement breaking two of his teeth. The case ultimately settled.
- pp. In 2008, a Denver Police officer used a fence as leverage to jump up and down on Mr. Vasquez who was only sixteen years old. The officer lacerated Mr. Vasquez' liver and broke his ribs. The City settled this case for \$885,000.
- qq. In 2007, Ross Edwards Smith went to the 16<sup>th</sup> Street Mall to protest the Iraq war and was assaulted by multiple Denver Police officers. Mr. Smith was punched in the face, thrown to the ground and had his face pushed into the pavement while an officer kneeled on his back. Mr. Smith was charged with interference, but the charges were dismissed. Mr. Smith suffered cuts, bruises, and aggravation of his Parkinson's Disease which caused severe and uncontrollable tremors. This case settled for an undisclosed amount.
- rr. In 2006, Chandler Lyles called the Denver Police to report that his mother was possibly suicidal. An officer asked Mr. Lyles to sit on the couch, which he did. Then, without provocation, an officer tackled Mr. Lyles to the ground, broke his clavicle, and handcuffed him. This case settled for an undisclosed amount.
- ss. In 2006, Hirut Berhanmeskel was violently arrested by a Denver Police officer for crying about her inability to pay a parking ticket. The officer slammed Ms. Berhanmeskel against the wall and twisted her arm to the point her wrist broke. This case settled for an undisclosed amount.
- tt. In 2005, David Nettles was unlawfully arrested when Denver Police responded to a domestic call across the street from Mr. Nettles' home. Officers punched Mr. Nettles

and then used nunchucks on his ankles causing him to fall. While on the ground, an officer kicked him and yelled, “when we give an order, you obey it!” Officers continued to punch Mr. Nettles and yell, “you did this to your own self!” Officers then handcuffed Mr. Nettles and, in the process, broke his shoulder, while officers continued to hit Mr. Nettles in the head and kick him in the back. This case settled for an undisclosed amount.

uu. In 2005, Denver Police pepper-sprayed a car full of people who could not move their car out of a full parking lot. When the occupants of the car got out, an officer again pepper-sprayed Quincy Michael Shannon. Mr. Shannon called 9-1-1 and began to describe what was happening. While on the phone with 9-1-1, an officer pepper-sprayed Mr. Shannon again, kicked his feet out from under him, and shoved his face into the concrete. Mr. Shannon was then handcuffed with his hand over one of his ankles which was pulled up behind his back. Mr. Shannon was then picked up by another officer and pepper-sprayed again in the face. This case settled for an undisclosed amount.

vv. In 2004, a Denver Police officer hit Richard Rra-Shada with his squad car. Mr. Rra-Shada then responded with profanity. The officers then exited the vehicle, slammed him to the ground, and began hitting Mr. Rra-Shada with a nightstick while another officer was punching him in the head. Mr. Rra-Shada suffered injuries to his shoulders, back, wrists, ribs, and abdomen. This case settled for an undisclosed amount.

ww. In 2004, a Denver Police officer followed Terrill Johnson to his home and then crashed into Mr. Johnson’s wife’s car. When Mr. Johnson went to inspect the car, officers exited their squad car with guns drawn. Mr. Johnson was unarmed. Officers

then slammed Mr. Johnson to the ground, punched him, and placed him in handcuffs all while using racial slurs. Mr. Johnson was charged with two traffic offenses that were later dropped, and the City paid Mr. Johnson \$75,000 to settle the lawsuit that followed.

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO**

Civil Action No.: 21-cv-2477

**ALEXANDRA BARBOUR,  
BRIANNA BARBER,  
JESSICA BEVERAGE,  
ROBERT HARR,  
CHRISTOPHER HOLLAND,  
NALINA INFANTE,  
CODY SCHMITT, and  
ALEX WOLFSON,**

Plaintiffs,

v.

**THE CITY AND COUNTY OF DENVER, a Colorado municipal corporation, and  
DOES 1-100, in their individual capacities,**

Defendants.

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**SUMMONS IN A CIVIL ACTION**

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**TO: THE CITY AND COUNTY OF DENVER**

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) – or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) – you must serve on the Plaintiff an answer to the attached complaint or motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff’s attorney, whose name and address are:

S. Birk Baumgartner  
Adam R. Yoast  
Baumgartner Law, LLC  
300 E. Hampden Ave., Ste. 401

Englewood, CO 80113  
(720) 626-9418

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

*CLERK OF COURT*

\_\_\_\_\_  
Date

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*