

October 27, 2020

The Hon. Bill de Blasio  
Mayor of the City of New York

**RE: NYCLU calls for an immediate cessation of NYPD's excessive use of force and other abusive tactics against protestors**

Dear Mayor de Blasio:

The New York Civil Liberties Union (NYCLU) writes today to express grave concern over the New York Police Department's (NYPD) escalating and abusive practices against protestors as well as your failure to protect the constitutional rights of New York City residents. We call on you to take swift and decisive action to stop the NYPD from wielding violent, aggressive, and dangerous tactics against New Yorkers who are lawfully exercising their right to engage in peaceful protest. Immediate action is necessary given the combination of the NYPD's recent unacceptable and unlawful treatment of protestors, and the likelihood of mass demonstrations in the days following the forthcoming election.



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In the last five months, New Yorkers have poured into our streets to voice their outrage over deaths of several unarmed Black civilians—including George Floyd in Minneapolis, Breonna Taylor in Louisville, and Daniel Prude in Rochester—at the hands of police. Our residents are exercising their constitutional right to protest the systematic murder of Black people, to demand that law-enforcement officers be held accountable, and to advocate for wide-reaching, transformative reform. NYPD officers have a sworn duty to uphold and protect the right of New Yorkers to engage in protest, and to do everything in their power to protect demonstrators from harm.

Instead, we have witnessed the NYPD repeatedly respond with excessive force and other unwarranted measures, jeopardizing the safety and well-being of protestors, causing physical injuries, and unjustifiably suppressing First Amendment freedoms of speech and assembly. As described in more detail in the lawsuit filed yesterday in federal court by the NYCLU and the Legal Aid Society of New York,<sup>1</sup> NYPD officers—at the direction of the City and NYPD leadership—have unleashed indefensible state-sanctioned violence. NYPD officers have descended on protestors with indiscriminate fist and baton strikes; thrown protestors to the ground and struck them with riot shields and bicycles; attacked crowds with chemical agents; handcuffed the wrists of demonstrators so tightly that their hands turned blue; and prevented protestors from escaping such violence by using kettling tactics and physical barriers. Demonstrators have been subjected to false arrest, excessive detention, and unnecessary exposure to COVID-19 by NYPD officers' refusing to wear masks. Journalists attempting to cover the protests have been met with

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<sup>1</sup> Payne et al. v. de Blasio et al., <https://www.nyclu.org/en/cases/payne-et-al-v-de-blasio-et-al>

the same inexcusable behavior, as have legal observers and protest medics. Instead of forcefully denouncing these unlawful and dangerous actions and taking steps to protect New Yorkers, you continue to excuse, condone, and even praise the NYPD for this conduct.

Compounding these abuses, the NYPD has behaved in other improper ways that undermine our trust. We have received multiple reports of on-duty NYPD officers at demonstrations with political masks and symbols—such as the “Punisher” logo or “thin blue line” messaging—leading New Yorkers to believe that the police are not there to serve and protect our *entire* community, but instead to make their own political statement. This summer, the NYPD failed to keep a demonstration by the sergeants’ union at the Brooklyn Bridge separate from an interfaith Black Lives Matter demonstration at the same time and place, and separate from a third group of anti-police protestors, with harmful results. Indeed, it is alleged that a sergeant who was demonstrating gave the order for the NYPD to charge counter-protestors, unacceptably crossing the line separating on-duty obligations and off-duty political activity. NYPD officers are also failing to protect individuals who seek to exercise their right to protest from those with opposing messages, as was seen, for example, when NYPD officers failed to stop pro-police demonstrators from assaulting counter-protestors at an event in Bay Ridge, or when NYPD officers failed to protect a journalist from being brutally beaten by a mob in Borough Park.

As you know, one week from today, this country will experience one of the most contentious presidential elections of the modern era. It may take weeks, if not longer, before a winner is declared. In the meantime—and no matter what the ultimate outcome—it is highly probable that New Yorkers will once again take to the streets in large numbers. Without your intervention, New Yorkers have every reason to believe the NYPD will respond to these mass protests with the same aggressive and dangerous tactics they have utilized throughout 2020, causing physical harm and trauma to countless residents of our city and quite possibly fueling the President’s call to disrupt the peaceful transition of power if the election does not go his way. You have been presented with well-documented evidence of NYPD aggression against demonstrators in the last several months and have repeatedly defended the department’s actions. Any failure on your part to take decisive measures to prevent such violence in the coming months would be simply unacceptable and would pose a serious threat to democracy and free expression.

For these reasons, we call on you to immediately direct that the NYPD do the following:

1. **Cease excessive use of force and chemical agents against protestors.** The NYPD must stop throwing protestors to the ground, pushing them, and striking them with fists, batons, riot shields, bicycles, vehicles and other implements. The police must also cease deploying pepper spray against protestors, especially those who are kettled or otherwise unable to leave. Chemical agents attack respiratory systems, cause coughing, and make it hard to breathe, and can make the



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respiratory tract more susceptible to infection, which is especially dangerous in the COVID-19 pandemic.

2. **Rein in the arbitrary and excessive use of kettling, frozen zones, and physical barricades.** The NYPD must stop using officers, barricades, bicycles, or vehicles to kettle protesters and unjustifiably trap and prevent them from leaving areas to avoid police-inflicted violence. They must also cease the practice of declaring public sidewalks “frozen zones,” or setting up barricades blocking sidewalks near government buildings and police precincts, and of pushing people out of these areas. Absent an articulable and documented dangerous condition, these practices—which do little more than create confusion and provide pretexts for arrests—must end.
3. **End the intimidation, surveillance, false arrest, and excessive detention of protestors.** Police officers must refrain from engaging in intimidating tactics that only serve to escalate and increase tensions at demonstrations, such as brandishing firearms, directing a crowd of police to swarm a single protestor, and charging at protestors. New Yorkers—including those who organize demonstrations—must not be arrested, surveilled or harassed for exercising their right to protest. Nor should their property, such as bicycles, cell phones and cameras, be indiscriminately confiscated. And when protestors are arrested and detained for low-level offenses, they should be processed quickly and released.
4. **Require neutral policing.** On-duty police officers must be prohibited from displaying symbols, messages, or slogans that promote white supremacy or white nationalism, “Punisher” or “thin blue line,” or political candidates. On-duty police officers are assigned to protests to keep people safe, not espouse their own political views, which they are free to do when they are off duty. The police also have a duty to protect *all* protesters, regardless of views, and must not give preferential treatment to pro-police groups in demonstrations.
5. **Mandate basic safety measures, including identification and face masks.** The identity and affiliation of law enforcement officers must be clearly identifiable to members of the public at all times. Prohibit the use of mourning bands to cover badges. Police officers also must abide by the same rules and COVID-19 best practices as everyone else; their refusal to wear masks puts the public at risk.
6. **Investigate and discipline police officers who break the rules.** Local Law 70 empowers the Office of the Inspector General for the NYPD within the Department of Investigation (OIG-NYPD) to investigate allegations of exactly the types of policing misconduct described herein, including excessive use of force and responses to political protest. You should immediately request that the OIG-NYPD open an investigation. In addition, the NYPD must initiate disciplinary proceedings against any officer who engages in misconduct when policing political protests. And for the safety of the public, officers who engage in such misconduct should be removed from protest-related duties.



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7. **Keep New Yorkers safe at protests.** The NYPD has a duty to protect the right of all New Yorkers to safely and peacefully protest. This means also protecting legal observers who monitor protests, journalists covering the events on the ground, and medics providing medical care at protests. The police must protect the right of everyone to videotape protests and police activity. And the NYPD must follow proper counter-protest protocol when the occasion arises.

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Please provide us with a written response detailing your plan to ensure that the NYPD will follow and effectively implement these mandates by Tuesday, November 3, 2020.

**NYCLU**

ACLU of New York

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Sincerely,



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cc: Commissioner Dermot Shea