

**Tomiko Brown-Nagin**  
**Prepared Statement**  
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Mr. Chairman and Members of the Committee:

My name is Tomiko Brown-Nagin.

I am the Dean of the Radcliffe Institute for Advanced Study at Harvard University, the Daniel P.S. Paul Professor of Constitutional Law at Harvard Law School, and Professor of History on the Faculty of Arts and Sciences at Harvard University. My areas of expertise include constitutional law, legal history, and American social history, particularly the 20<sup>th</sup> century struggle for civil rights. I have written and edited books, articles, and essays on all of these subjects.

I am honored to have been asked to offer testimony today on a topic of such importance.

In my statement, I will:

- Describe the sacrosanct role of the First Amendment in our democracy;
- Recount historical examples of constitutionally protected civil rights-era protests and law enforcement backlashes against them; and
- Explain that most Black Lives Matter protesters, like civil rights-era demonstrators, have engaged in forms of political expression that the First Amendment protects and that government, including law enforcement, is obligated by the Constitution to respect.

I will begin by stating my conclusions:

- Our Constitution prohibits government from penalizing the peaceful expression of disfavored or unpopular views, including strident criticism of public officials and public policies;
- It is especially important that the men and women entrusted with upholding and enforcing the law honor the First Amendment; and
- This Congress should make clear its devotion to the well-established and crucial rights of speech, assembly, and protest, and appropriate authorities should reprimand or sanction law enforcement officers and other government officials who do not respect protesters' First Amendment rights.

The First Amendment's Role in a Democracy

The First Amendment of the United States Constitution protects the rights of speech, assembly, and protest, and is sacrosanct in American law and society. The amendment ensures that the

voices and perspectives of the American people—of “We the People”—can be raised and heard on questions of controversy.

The commitments enshrined in the First Amendment reflect the values of a country born of protest against tyrannical rulers and fashioned into a “more perfect union” through the struggles of generations of Americans, particularly those originally excluded from full American citizenship—African Americans, women, and other marginalized communities.

These struggles generated decisions by federal, state, and local governments, and especially by the federal courts, forming the body of First Amendment law and practice that is both distinctive to and cherished by this nation.

The right to air grievances against government through protest distinguishes democratic societies such as ours from repressive regimes. China, North Korea, Saudi Arabia, and the former Soviet Union, among others, are notorious for the brutal repression of dissent through abusive police and security forces.

By contrast, American leaders have long defined American values in contradistinction to the suppression of people’s voices, in contradistinction to the absence of government accountability, and in contradistinction to abusive police practices typical of repressive regimes.

In this country, “[t]he freedom of individuals... to oppose or challenge police action without thereby risking arrest is one of the principal characteristics by which we distinguish a free nation from a police state,” noted United States Supreme Court Justice William Brennan in a landmark 1987 case.<sup>1</sup>

Not only is the First Amendment a bedrock principle of American democracy, it also has proved critical to other freedoms, to governance responsive to the people, and to struggles for equality. The nonpartisan values embodied in the amendment are enjoyed by all regardless of race, sex, gender identity, religion or other background characteristics. The amendment protects multiple and competing perspectives on controversial issues. It entitles any individual or group to seek remedies for perceived injustices. And it encourages broad democratic engagement.<sup>2</sup>

Nevertheless, the long arc of American history shows that the rule of law is tested during times of social conflict, of political turbulence, and of economic distress. During the Great Depression, the Cold War, the civil rights movement, the Vietnam War—and in recent weeks, during Black Lives Matter protests following the killing of George Floyd—some governmental actors have disregarded the principles enshrined in the First Amendment.

In this nation devoted to freedom, to combatting racial discrimination, and to making government accountable to the people, expressive activities protected by the First Amendment should be expected, if not universally welcomed. This expectation, and a recognition of the value of protest, should inform responses to Black Lives Matter demonstrations following the killing of George Floyd, one among many other Americans felled in encounters with the police. A multi-racial majority of Americans have condemned such killings and endorsed the principle that

Black Lives Matter; that majority includes people from all walks of life and leaders in business, in education, in the military, in non-profit organizations, in Congress—and in law enforcement.

### Law Enforcement Violations of Protesters' Rights during the Civil Rights Era

Across history we can observe that struggles over the First Amendment frequently have arisen in the context of law enforcement officers' interactions with protesters. Sworn to uphold the Constitution and to enforce our laws, officers sometimes have violated the rights of those seeking to hold government accountable through constitutionally protected activities.

When several such occasions generated litigation, the United States Supreme Court made unmistakably clear that protesters are entitled under the First Amendment to assemble, to speak, and to criticize government. The court has so ruled in cases involving striking workers, anti-segregation activists, students opposing the Vietnam War, demonstrators decrying police brutality, indeed non-violent dissidents with other aims—including when they criticize police officers and government officials and demand redress of wrongs. At the same time, the court has held that government may impose time, place, and manner restrictions on protests, provided such restrictions are narrowly tailored.

The history of the civil rights movement illustrates the importance of First Amendment rights, the backlash against the exercise of those same rights, and the body of law conferring constitutional protection upon peaceful protesters.

### Birmingham, Alabama

Birmingham, Alabama was the site of a seminal confrontation in May of 1963, when hundreds of adults—as well as children and teenagers—participated in protests organized by the Alabama Christian Movement for Civil Rights and the Southern Christian Leadership, headed by Dr. Martin Luther King, Jr. Law enforcement officers and firemen beat the protesters; set dogs upon them; and knocked them to the ground with the force of water from fire hoses. Eugene “Bull” Connor, Commissioner of Public Safety in Birmingham and an avowed white supremacist, had ordered this brutal attack on non-violent demonstrators.

Images of the officers' actions against peaceful demonstrators, especially young people, “sickened” President John F. Kennedy, pricked the conscience of some northern whites who had ignored or downplayed the horrors of segregation, and revolted supporters of human rights worldwide. The Birmingham demonstrations helped lay the groundwork for passage of the Civil Rights Act of 1964, enacted by a bipartisan majority.<sup>3</sup>

The Birmingham campaign also gave rise to a landmark United States Supreme Court precedent of enduring relevance. The case involved the city of Birmingham's denial of the Rev. Fred Shuttlesworth's permit to picket “against the injustices of segregation and discrimination.” Police officers subsequently arrested Shuttlesworth for parading in violation of a local ordinance. In *Shuttlesworth v. Birmingham*, the Supreme Court held that the Birmingham permit requirement constituted an unlawful restraint on speech; the city had denied Shuttlesworth the permit

precisely because he sought to fight racial discrimination.<sup>4</sup> This critically important case requires officials to respect peaceful protesters' First Amendment rights.

### Selma, Alabama

The climactic clash between civil rights supporters and law enforcement occurred in Selma, Alabama, in 1965, when Dr. King and the Southern Christian Leadership Conference joined forces with the Student Non-violent Coordinating Committee (“SNCC”) to protest white resistance to black voting. In March of that year, the civil rights groups organized a 54-mile march from Selma to the state capital in Montgomery. Six hundred people headed out from Selma on March 7, 1965.<sup>5</sup>

But the procession ended not far from where it had started: When marchers crossed the Edmund Pettus Bridge, state and local law enforcement officers attacked them. Officers pummeled the protesters with clubs and tear gas and drove them back to Selma. Television footage of the clash—what came to be known as “Bloody Sunday”—helped to turn the tide in the struggle for the right to vote. Outraged by Bloody Sunday, Americans in 80 cities, including Boston, San Diego, and Detroit, staged demonstrations and demanded federal action.<sup>6</sup>

The Selma tragedy quickened the resolve of President Lyndon Baines Johnson and the Congress to enact federal voting rights legislation. The Voting Rights Act— which Representative John Lewis, then chairman of SNCC and a victim of the Bloody Sunday violence, called the “nation’s finest hour” and the “crowning achievement of the civil rights movement”—became law on August 6, 1965.<sup>7</sup>

### Memphis, Tennessee

While the federal courts ultimately issued many decisions that affirmed the First Amendment rights of peaceful protesters, the civil rights movement did not always initially find favor in the courts. On several occasions, segregationist officials sought and obtained injunctions against planned protests. It often took months, even years, for courts to vindicate the movement’s First (and Fourteenth) Amendments rights.<sup>8</sup>

It was within the context of an injunction against a planned protest that Dr. Martin Luther King, Jr. delivered his final address. Dr. King had hoped to stage a solidarity march with sanitation workers in Memphis that would have highlighted the interdependence of struggles for social and economic justice. An injunction, predicated on the eruption of violence at a prior march and the imposition of a curfew, threatened to end the workers’ momentum.

In his April 3, 1968 speech, “I’ve Been to the Mountaintop,” King lamented occasions when the rule of law failed the movement. At the same time, he praised constitutional principles that nonviolent civil rights actors had frequently used to ensure greater government accountability. King said:

All we say to America is, “Be true to what you said on paper.”

If I lived in China or even Russia, or any totalitarian country, maybe I could understand some of these illegal injunctions. Maybe I could understand the denial of certain basic First Amendment privileges, because they hadn’t committed themselves to that over there.

But somewhere I read of the freedom of assembly. Somewhere I read of the freedom of speech. Somewhere I read of the freedom of press. Somewhere I read that the greatness of America is the right to protest for right.

And so ... we aren't going to let any injunction turn us around. We are going on.<sup>9</sup>

King’s words derived their power in part from his allusion to our nation’s core principles; that night he evoked enduring truths about the foundational importance of the First Amendment to social and legal change.

The next day, the court lifted the injunction, allowing the march to continue. But King would not be a part of it. An assassin murdered him on April 4, 1968.<sup>10</sup>

Nevertheless, King’s words live on and express enduring truths about the critical importance of First Amendment freedoms to struggles for democracy and equality.

### Black Lives Matter Protests and Law Enforcement Backlash

The civil rights protests of the 1960s were sparked by legally sanctioned racial discrimination, including a criminal justice system that routinely disregarded the rights and lives of African Americans. We are living in a different moment, one in which racial segregation by law is understood to be unconstitutional. And since the civil rights era, we have witnessed positive changes in the relationship between government, including law enforcement, and communities of color.

Today’s police forces include significant numbers of officers of color, who, together with many white officers, take seriously the responsibility to enforce the law with due respect for the constitutional rights—and the humanity—of policed communities. In recent weeks, some of these officers and police chiefs have publicly rejected excessive use of force and supported those protesting the killing of George Floyd and other African American men and women. Some have kneeled with Black Lives Matter demonstrators.<sup>11</sup>

But we also have observed actions by police officers at nationwide protests that are reminiscent of some of the unconstitutional violations of the civil rights era.

Officers have used aggressive, sometimes brutal, tactics against Black Lives Matter protesters. Many of these events have been captured on video and chronicled by journalists. These incidents have included:

- officers harassing protesters and tearing up signs expressing criticism of police violence;
- officers arresting peaceful protesters seemingly because of statements or signs criticizing police brutality and violence;
- officers brutalizing peaceful protesters, including hitting, pushing, yanking, grabbing, and knocking them to the ground;
- officers menacing protesters with police motorcycles or cars, including driving into crowds of civilians;
- officers using pepper spray and other chemical irritants against peaceful protesters;
- officers spraying peaceful protesters with rubber bullets;
- officers arresting journalists reporting on peaceful protests; and
- officers using military equipment, including helicopters, to disperse protesters.<sup>12</sup>

An appendix to my written testimony provides a more comprehensive list of such incidents.

To the extent that news reports and videos accurately capture conduct by law enforcement, actions of this kind violate protesters' rights to engage in forms of political expression protected by the First Amendment to the Constitution.<sup>13</sup>

To be clear, government can regulate the time, place, and manner of protests, and cities and states can impose curfews in pursuance of public safety.<sup>14</sup> But the circumstances under which such restrictions are lawful are strictly limited by the Constitution; regulations must be supported by a significant governmental interest and narrowly tailored in ways that protect First Amendment rights.<sup>15</sup>

Protected expression cannot be restricted based on the substance of individuals' or groups' advocacy.<sup>16</sup>

And—critically—activities protected under the First Amendment cannot be banned even if similar activities in the past led to or involved instances of violence.<sup>17</sup>

To uphold the First Amendment and equal treatment under the law, government cannot discriminate on the basis of viewpoint in 2020 any more than it could during the climactic years of the American civil rights movement.

### Appendix

#### **BATON USE**

- Example: “Nearly 20 protesters in New York City have filed paperwork indicating they plan to sue the police and the city for being beaten by cops with batons at peaceful rallies.” -[CBS News](#)
- 5/30/20 – Police attack protesters with batons and 37/40mm impact projectiles in Los Angeles, CA.
  - Source: [AI](#), [Twitter](#) video
- 5/31/20 – Police beat individuals with batons in Boston, MA.
  - Source: [AI](#), [WCVB](#)

- 6/1/20 – Police use batons/shields to attack protesters and journalists in Washington, DC.
  - Source: [AI](#), [NBC News](#), [Twitter](#) video
- 6/4/20 – Police fire rubber bullets and use batons to move a protest that had been peaceful in Los Angeles, CA.
  - Source: [The Hill](#)

### **PUSHING/KICKING**

- Example: “In Buffalo, in western New York state, two officers shoved a 75-year-old man to the ground. A video showed the man hitting his head on the ground, causing his blood to spill on the sidewalk. He is now gravely ill in hospital.” -[The Guardian](#)
- Example: “In various videos taken that day, [Boston Police Captain John] Danilecki can be seen releasing pepper spray and aggressively grabbing and pushing protesters, many of whom appeared to be acting peacefully. One video shows Danilecki chasing down a protester and pushing him to the ground. Another shows him forcibly attempting to rip the mask from a protester’s face.” -[The Boston Globe](#)
- 5/30/20 – Police kicked a woman sitting on the ground in Erie, PA.
  - Source: [AI](#), [Twitter](#) video
- 5/31/20 – Police pushed over an elderly person walking with a cane in Salt Lake City, UT.
  - Source: [AI](#), [ABC](#) video
- 6/4/20 – Police pushed an elderly man to the ground in Buffalo, NY.
  - Source: [AI](#), [NPR](#) video

### **CARS – DRIVING OVER PROTESTERS OR INTO CROWDS**

- Example: “Police are investigating after a video appeared to show a New York City Police Department truck plowing through a crowd during Saturday's protests over the death of George Floyd. The 27-second video, which was posted to Twitter, shows an NYPD truck in front of a crowd throwing objects at the vehicle. There is a barricade in front of the truck. The truck then appears to drive into the barricade, knocking over protesters. Screaming and yelling are heard while a person is seen jumping on top of the truck.” -[CNN](#)
- 5/30/20 – Police drove into crowds of protesters in New York, NY.
  - Source: [AI](#), [Twitter](#) video
- 5/31/20 – Police car drove into protester crowd, pinning an individual under the tires in Los Angeles, CA.
  - Source: [AI](#), [CBS](#) video

### **IMPACT PROJECTILES**

- Example: “Portland police targeted and shot protesters with rubber bullets, including one man who is suing for \$950,000 after being hit in the knee, sending him to the hospital.” -[CBS News](#)
- 5/30/20 – Line of police use tear gas grenades, impact projectiles, and pepper spray to clear peaceful crowd protesting in front of courthouse in Fort Wayne, IN. A local journalist covering this protest lost his eye when struck by a grenade..
  - Source: [AI](#), [The Hill](#)

- 5/30/20 – Police fire bean bag projectiles at protesters, causing a woman to go blind in one eye in La Mesa, CA.
  - Source: [AI](#), [NBC](#)
- 5/31/20 – After launching tear gas to disperse protesters, police run down a man, fire less-lethal impact projectiles into him from behind, and tackle him in Raleigh, NC.
  - Source: [AI](#), [Twitter](#) video
- 5/31/20 – Police throw tear gas grenades and use shotguns to shoot unidentified less-lethal impact projectiles indiscriminately at the crowd in Columbia, SC.
  - Source: [AI](#), [The State](#)
- 6/4/20 – Police fire rubber bullets and use batons to move a protest that had been peaceful in Los Angeles, CA.
  - Source: [The Hill](#)

### PEPPER SPRAY

- Example: “Protesters gathered in Washington DC’s Lafayette Square to remove a statue of President Andrew Jackson on Monday night, but were later dispersed by police officers using pepper spray in the latest demonstration targeting symbols of the U.S.’ racist history.” -[Forbes](#)
- 5/28/20 – Advancing police line uses pepper spray to push back protesters who have their hands raised in Denver, CO.
  - Source: [AI](#), [Twitter](#) video
- 5/30/20 – Peaceful protesters sprayed with pepper spray in Des Moines, IA.
  - Source: [AI](#), [Des Moines Register](#)
- 5/30/20 – Police fire pepper spray into the faces of two protesters walking away from them in Denver, CO.
  - Source: [AI](#), [Twitter](#) video
- 5/30/20 – Police in camouflage uniform pepper sprays peaceful crowd and journalist showing his press credentials in Chicago, IL.
  - Source: [AI](#), [WTTW](#) News
- 5/31/20 – Police use pepper spray to push back protesters at New Haven police headquarters in New Haven, CT.
  - Source: [AI](#), [New Haven Independent](#)
- 6/4/20 – Police deploy pepper spray to keep away people protesting the arrest of a woman pinned to the ground in Tampa Bay, FL.
  - Source: [AI](#), [WFLA](#)

### PEPPER BALLS

- Example: “Denver police Chief Paul Pazen launched an internal investigation into officers after a viral video showed them firing a barrage of pepper balls at a man standing beside his car and shouting that his pregnant girlfriend was inside. The video was recorded on May 29 during the second night of George Floyd protests.” -[Denver Post](#)
- 5/28/20 – Police fire pepper balls into a crowd of protesters in Denver, CO.
  - Source: [AI](#), [Twitter](#) video
- 5/29/20 – Line of police fire pepper balls at dispersed peaceful protesters in Sacramento, CA.
  - Source: [AI](#), [SacBee](#)

- 5/29/20 – Police fire tear gas and a large number of pepper balls at line of peaceful protesters seated in the road in Omaha, NE.
  - Source: [AI](#)
- 5/29/20 – Police fire pepper balls at solitary television journalist while she is broadcasting live in Louisville, KY.
  - Source: [AI](#), [Wave3 News](#)
- 5/30/20 – Police in riot gear fire pepper balls at protesters in Baltimore, MD.
  - Source: [AI](#)
- 5/31/20 – Police fire pepper balls at several dozen protesters laying on the ground in Huntington Beach, CA.
  - [AI](#), [OC Register](#)
- 5/31/20 – Police fire tear gas, followed by pepper balls, at peaceful protesters chanting: “Hands up, don't shoot” in Lincoln, NE.
  - Source: [AI](#)
- 5/31/20 – Police fire tear gas, flash grenades, and pepper balls at protesters to clear the square in front of the state capital building in Raleigh, NC.
  - Source: [AI](#)
- 6/1/20 – A mixture of federal security officers and National Guard clear protesters from Lafayette Park using pepper balls, riot control agents, and "stinger balls" which deploy pepper spray and rubber fragments with a "flash bang" effect in Washington, DC.
  - Source: [AI](#), [Politico](#)
- 6/2/20 – Police throw tear gas and flash grenades, trapping protesters between smoke clouds and two high buildings, and then fire pepper balls on them from above, in Charlotte, NC.
  - Source: [AI](#), [WBTV](#)
- 6/2/20 – police shoot pepper balls at protesters fleeing from tear gas in San Diego, CA.
  - Source: [AI](#)

## **FLASH BANGS**

- Example: “Deployment of flash-bang grenades, blast balls and other devices to control and disperse crowds have become a hallmark of the mayhem that has marred recent demonstrations in Seattle and other U.S. cities in the wake of Floyd’s death. The Seattle Police Department’s use of the crowd-control tool date back at least several years and has drawn past scrutiny and concern from civilian watchdogs.” -[Seattle Times](#)
- 5/28/20 – Police throw tear gas grenades and flash bangs at line of peaceful protesters in Jefferson Park in Louisville, KY.
  - Source: [AI](#), [WDRB News](#)
- 5/31/20 – Kneeling protesters hit by flash bangs in Little Rock, AK.
  - Source: [AI](#), [KATV](#)
- 6/1/20 – Police deploy flash bangs, pepper spray, and tear gas into tightly packed crowd, inciting a rush in Seattle, WA.
  - Source: [AI](#)
- 6/3/20 – Police fire tear gas and throw flash bangs at peaceful protesters chanting: “Don't shoot” in Iowa City, IA.
  - Source: [AI](#)

## TASER USE

- Example: “In Atlanta, six police officers were arrested for illegally tasing two college students on May 30. The students were driving when the police stopped them for violating the city’s curfew and repeatedly asked what was going on as the officers opened the car door. The officers then aggressively dragged the students out of the car after tasing them, then slashed their tires and broke the driver’s side window—all of which was captured on air by a local CBS affiliate. Two of the six officers were fired and three were placed on desk duty before prosecutors issued arrest warrants for charges of aggravated assault, illegally pointing a taser, and criminal damage to property against all six officers.” -[Vox](#)
- 6/1/20 – Police are accused of tasing a 16-year-old boy in the Bronx, New York during protests.
  - Source: [NBC News](#)
- 6/4/2020 – Eight police officers surround a woman lying on the ground and shoot her with a taser in Los Angeles, California, while protesters shouted for them to stop.
  - Source: [LA Times](#)
- 6/27/2020 – Police unholstered tasers and told protesters to move away from a prison gate where they were protesting the arrest of a fellow protester in Tampa Bay, FL.
  - Source: [Tampa Bay Times](#)

## TEAR GAS

- Example: “At least 100 law enforcement agencies—many in large cities—used some form of tear gas against civilians protesting police brutality and racism in recent weeks, according to an analysis by The New York Times. This brief period has seen the most widespread domestic use of tear gas against demonstrators since the long years of unrest in the late 1960s and early ’70s...” -[New York Times](#)
- 5/28/20 – Police throw tear gas grenades and flash bangs at line of peaceful protesters in Jefferson Park in Louisville, KY.
  - Source: [AI](#), [WDRB](#) News
- 5/29/20 – Tear gas used on protesters in Oakland, CA.
  - Source: [AI](#)
- 5/29/20 – Tear gas used on protesters in Fontana, CA.
  - Source: [AI](#)
- 5/30/20 – Police use tear gas against peaceful protesters in Dallas, TX.
  - Source: [AI](#), [Texas Tribune](#)
- 5/30/20 – Sheriff’s deputies deploy tear gas at busy intersection, among stopped cars, in Jacksonville, FL.
  - Source: [AI](#), [WOKV](#) News
- 5/30/20 – Sheriff’s deputies fire tear gas to disperse a crowd in the University Mall parking lot in Tampa Bay, FL.
  - Source: [AI](#)
- 5/30/20 – Tear gas used on protesters on a residential street in Colorado Springs, CO.
  - Source: [AI](#), [Twitter](#) video
- 5/30/20 – Tear gas used at protest outside police headquarters in Phoenix, AZ.
  - Source: [AI](#), [CBS](#) video

- 5/30/20 – Police pop tear gas grenades and kick them towards peaceful crowd, inciting a panic in Fargo, ND.
  - Source: [AI](#), [Star Tribune](#)
- 5/30/20 – Police deploy tear gas against peaceful protesters outside county clerk's building in Toledo, OH.
  - Source: [AI](#)
- 5/30/20 – Police deploy tear gas into crowd in Oklahoma City, OK.
  - Source: [AI](#), [Twitter](#) video
- 5/30/20 – A mixture of uniformed and camouflaged police deploy tear gas at the start of curfew in Charleston, SC.
  - Source: [AI](#), [ABC News](#)
- 5/31/20 – Tear gas used against protesters outside Walgreens in Conway, AK.
  - Source: [AI](#), [KATV](#) video
- 5/31/20 – Police fire tear gas and sponge rounds at dispersing protesters, fracturing a woman's skull in Ft. Lauderdale, FL.
  - Source: [AI](#), [Miami Herald](#)
- 5/31/20 – Protesters on highway hit by tear gas in Mobile, AL.
  - Source: [AI](#), [FOX](#) video
- 5/31/20 – Police fire tear gas grenades at protesting students in Athens, GA.
  - Source: [AI](#), [Twitter](#) video
- 5/31/20 – Police fire tear gas at street corner where small group of worshipers, including children and a woman using a wheelchair, are holding a peaceful prayer service in Indianapolis, IN.
  - Source: [AI](#), [The Indy Channel](#)
- 5/31/20 – Police fire tear gas into a peaceful protest at Riverside Park in Spokane, WA.
  - Source: [AI](#)
- 5/31/20 – Police fire tear gas from armored vehicle, striking a journalist who identifies himself in Eugene, OR.
  - Source: [AI](#), [Register-Guard](#)
- 5/31/20 – Man is pepper sprayed and then shot at head level with a tear gas grenade at extremely close range in Grand Rapids, MI.
  - Source: [AI](#)
- 5/31/20 – Police fire tear gas grenades at small group of peaceful protesters in parking lot of shopping mall in Sioux Falls, SD.
  - Source: [AI](#)
- 5/31/20 – Police tear-gas a small and peaceful crowd in Murfreesboro, TN.
  - Source: [AI](#), [WKRN](#)
- 5/31/20 – Police fire tear gas and throw flash grenades at peaceful protesters gathered at the Hamilton County Courthouse in Chattanooga, TN.
  - Source: [AI](#), [YouTube](#)
- 5/31/20 – Police launch tear gas and fire unidentified impact projectiles at peaceful protesters in El Paso, TX.
  - Source: [AI](#), [CBS 4 Local](#)
- 5/31/20 – Police use tear gas against peaceful protesters in Austin, TX.
  - Source: [AI](#), [Texas Tribune](#)

- 5/31/20 – Police fire tear gas and pepper balls at protesters in downtown Las Vegas.
  - Source: [AI](#), [US News](#)
- 5/31/20 – Police throw tear gas grenades and fire pepper balls at crowd, hitting a television reporter during live broadcast in Tulsa, OK.
  - Source: [AI](#), [Tulsa Channel 8](#)
- 5/31/20 – Police use tear gas, pepper balls, and flash grenades to disperse protesters in Portland, OR.
  - Source: [AI](#), [Willamette Week](#)
- 6/1/20 – Protesters flee tear gas in Bentonville, AK.
  - Source: [AI](#), [Twitter](#) video
- 6/1/20 – Police use tear gas to enforce 8pm curfew in Oakland, CA.
  - Source: [AI](#), [SF Chronicle](#)
- 6/1/20 – A line of police in riot gear fire pepper balls, tear gas, and pepper spray at a small group of protesters laying on the ground in Kalamazoo, MI.
  - Source: [AI](#), [WWMT](#)
- 6/1/20 – Police use tear gas to disperse crowd near police headquarters in St. Louis, MO.
  - Source: [AI](#), [Twitter](#)
- 6/1/20 – Line of police fire tear gas, pepper balls, and flash bangs at a single protester in the street in Albuquerque, NM.
  - Source: [AI](#), [Facebook](#) video
- 6/1/20 – After protesters throw fireworks, police fill a neighborhood with tear gas in Albany, NY.
  - Source: [AI](#), [Fulton County Area News](#) on FB
- 6/1/20 – Police use tear gas on crowd already dispersing from in front of police headquarters in Asheville, NC.
  - Source: [AI](#)
- 6/1/20 – Police fire tear gas at peaceful kneeling protesters chanting “hands up, don’t shoot” near the Robert E. Lee Memorial in Richmond, VA.
  - Source: [AI](#), [Richmond Times-Dispatch](#)
- 6/1/20 – Police herd crowd into dangerous crush situation against highway slope and fence, using tear gas and pepper spray in Philadelphia, PA.
  - Source: [AI](#), [CBS Philadelphia](#)
- 6/1/20 – Protesters find themselves surrounded by multiple deployments of police tear gas in Pittsburgh, PA.
  - Source: [AI](#), [Pittsburgh Post-Gazette](#)
- 6/2/20 – Protesters tear-gassed in Providence, RI.
  - Source: [AI](#)
- 6/2/20 – Police fire tear gas and sponge rounds to disperse protesters in Wichita, KS.
  - Source: [AI](#)
- 6/2/20 – National Guard and local and state police use tear gas to remove protesters outside of a school in Brockton, MA.
  - Source: [AI](#)
- 6/3/20 – Tear gas used to disperse peaceful protesters outside Huntsville, AL courthouse.
  - Source: [AI](#)

- 6/3/20 – Police fire tear gas and throw flash bangs at peaceful protesters chanting: “Don't shoot” in Iowa City, IA.
  - Source: [AI](#)
- 6/3/20 – Police fire tear gas at large crowd trapped on Crescent City Connection Bridge in New Orleans, LA.
  - Source: [AI](#), [Times-Picayune](#)

## **MILITARY EQUIPMENT AND HELICOPTERS**

- Example: “NBC News has found at least 29 instances on social media and in news accounts where military-style vehicles that belong to local police departments have been used to confront protesters since Floyd's death on May 25. At least 17 of the vehicles were deployed by police departments that obtained mine-resistant vehicles (MRAPs) through a controversial Pentagon military surplus program launched in 1997 under President Clinton. . . . In Salt Lake City, an elderly man with a cane was knocked down by a police officer who had emerged from a heavily armored mine-resistant vehicle. In Philadelphia, one was used for police officers to hurl tear gas at protesters.” -[NBC News](#)
- 5/29/20 – 6/16/20 – NYPD monitored protests in New York City throughout the end of May and June through intensive helicopter use, totaling over 186 hours of monitoring via helicopter.
  - Source: [Gothamist](#)
- 5/31/20 – NYPD sent military vehicles down New York City streets during protests.
  - Source: [New York Times](#)
- 6/1/20 – National Guard sent military helicopters to Washington, DC to fly low over protesters, causing winds equivalent to a tropical storm.
  - Source: [Washington Post](#)
- 6/5/20 – Police in Orlando, FL used a long-range acoustic device, or LRAD, a military bullhorn, to set alarms and make announcements about curfew enforcement.
  - Source: [Orlando Sentinel](#)

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<sup>1</sup> *Houston v. Hill*, 482 U.S. 451, 462-63 (1987).

<sup>2</sup> See *Whitney v. California*, 274 U.S. 357, 375-76 (1927) (Brandeis, J., concurring) (“They believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; that without free speech and assembly discussion would be futile; . . . that the greatest menace to freedom is an inert people; that public discussion is a political duty; and that this should be a fundamental principle of the American government.”).

<sup>3</sup> Glenn T. Eskew, *But for Birmingham: The Local and National Movements in the Civil Rights Struggle* (Chapel Hill: UNC Press, 1997), 6, 310-312.

<sup>4</sup> See *Shuttlesworth v. Birmingham*, 394 U.S. 147 (1969).

<sup>5</sup> See Adam Fairclough, *To Redeem the Soul of America: The Southern Christian Leadership Conference and Martin Luther King, Jr.* (Athens: Univ. of Georgia Press, 1987), 242.

<sup>6</sup> See Taylor Branch, *Pillar of Fire: America in the King Years, 1963-1965* (1998), 583.

<sup>7</sup> See Tomiko Brown-Nagin, *Courage to Dissent: Atlanta and the Long History of the Civil Rights Movement* (New York: Oxford University Press, 2011), 253.

<sup>8</sup> See *Shuttlesworth v. Birmingham*, 394 U.S. 147 (1969), decided years after the underlying 1963 events; compare *Walker v. City of Birmingham*, 388 U.S. 307 (1967) (upholding criminal contempt conviction for deliberate violation of injunction).

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<sup>9</sup> Rev. Dr. Martin Luther King, Jr., [I've Been to the Mountaintop, Address in Support of Striking Sanitation Workers](#) (Apr. 3, 1968).

<sup>10</sup> See Michael Honey, *Going Down Jericho Road: The Memphis Strike, Martin Luther King Jr., Last Campaign* (New York: W.W. Norton & Co., 2007), 382-83, 409-411.

<sup>11</sup> Cities where police have been recorded kneeling with protesters include Washington, DC; Miami, FL; Des Moines, IA; Queens, NY; Buffalo, NY; and Los Angeles, CA. See Hannah Knowles and Isaac Stanley-Becker, [Some Officers March And Kneel With Protesters, Creating Dissonant Images On Fraught Weekend Of Uprisings](#), Wash. Post., May 31, 2020; Stacy Chen, [Some Protesters Take Issue With Police Kneeling, Calling It 'PR Stunt,'](#) ABC News, June 6, 2020.

<sup>12</sup> See, for example, Shawn Hubler & Julie Bossman, [A Crisis That Began With an Image of Police Violence Keeps Providing More](#), N.Y. Times, June 12, 2020.; K.K. Rebecca Lai, Bill Marsh & Anjali Singhvi, [Here Are the 100 U.S. Cities Where Protesters Were Tear-Gassed](#), N.Y. Times, June 18, 2020.

<sup>13</sup> See *Keating v. City of Miami*, 598 F.3d 753, 757 (11th Cir. 2010); *Houston v. Hill*, 482 U.S. 451, 461 (1987); *Gregory v. Chicago*, 394 U.S. 111 (1969).

<sup>14</sup> See *Menotti v. City of Seattle*, 409 F.3d 1113, 1128 (9th Cir. 2005); *Hutchins v. District of Columbia*, 188 F.3d 531, 548 (D.C. Cir. 1999); *Nunez v. City of San Diego*, 114 F.3d 935, 951 (9th Cir. 1997).

<sup>15</sup> See *Snyder v. Phelps*, 562 U.S. 443 (2011); *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989); *United States v. O'Brien*, 391 U.S. 367 (1968).

<sup>16</sup> *Shuttlesworth v. Birmingham*, 394 U.S. 147 (1969); *Edwards v. South Carolina*, 372 U.S. 229 (1963); *De Jonge v. Oregon*, 299 U.S. 353 (1937).

<sup>17</sup> See *Houston v. Hill*, 482 U.S. 451, 461 (1987); *Collins v. Jordan*, 110 F.3d 1363, 1372-73 (9th Cir. 1996); *Cox v. Louisiana*, 379 U.S. 536, 551 (1965).