

June 10, 2020

To the City Council of New Orleans:

Last week, thousands of New Orleanians, many of us among them, filled the streets night after night to express sorrow and outrage at the killing of George Floyd, Ahmaud Arbery, Breonna Taylor, Modesto Reyes, Tony McDade and the many other Black lives extinguished by police, and to join protesters around the country who demand justice and transformation.

During these protests, the New Orleans Police Department, with support from Troop N of the Louisiana State Police,¹ fired a chemical agent commonly known as “tear gas,” a weapon that the military is banned from using on enemies abroad, and rubber bullets, which can maim and kill, at its own residents. The next day, Police Superintendent Shaun Ferguson claimed his department used “tear gas and only tear gas” on “people who chose to use force.” This Monday, videos and photographs forced Superintendent Ferguson to admit that these statements were lies.

The use of chemical agents is a violent response to crowd control that is indiscriminate in its effects. It is banned in war by the 1925 Geneva Protocol, ratified by the U.S. in 1974 (in the wake of the scandalous use of Agent Orange by the U.S. military in Vietnam),² and by the 1993 Chemical Weapons Convention (CWC), ratified by the U.S. in 1997. The CWC explicitly banned the use of riot control agents (which includes these same chemicals) in war.³

Moreover, the use of chemical agents during the pandemic was condemned by the June 4, 2020 Open letter to Mayor Cantrell, Chief Ferguson, and the City Council by a group of healthcare professionals in the Greater New Orleans area.⁴ They warn that use of these chemicals may “increase the risk of infection with COVID-19 by irritating the respiratory tract, increasing inflammation and inducing cough, thus dispersing droplets throughout the surrounding environment.” They continue, “[t]o use a chemical that increases the risk of these symptoms in the midst of one of the deadliest infectious disease outbreaks in modern day history is irresponsible and could contribute to overwhelming an already overburdened healthcare system.”

¹ Troop N is funded, in large part, through a contract with the City of New Orleans.

² Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare (Geneva Protocol), at <https://2009-2017.state.gov/t/isn/4784.htm> (last accessed June 9, 2020).

³ United Nations Chemical Weapons Convention, Art. I (5), at <https://www.opcw.org/chemical-weapons-convention/articles/article-i> (last accessed June 9, 2020). Riot control agents are defined by the Convention as “Any chemical not listed in a Schedule, which can [rapidly] produce . . . in humans, sensory irritation or disabling physical effects which disappear within a short time following termination of exposure.” CWC Art. II (7), at <https://www.opcw.org/chemical-weapons-convention/articles/article-ii-definitions-and-criteria> (last accessed June 9, 2020). To be clear, the CWC does not prohibit the use of riot control agents in domestic law enforcement. But does the City of New Orleans seek to take refuge in this heinous double standard?

⁴Open Letter from Healthcare Professionals to City Council, June 3, 2020, at <https://assets.documentcloud.org/documents/6938352/Healthcare-Professionals-Against-the-Use-or-Tear.pdf> (last accessed June 9, 2020).

How is it possible that NOPD stockpiled weapons that are banned by international law and used them during the pandemic on the people of New Orleans who were assembled for the very purpose of protesting police violence against Black people? The reason is simple: for decades, the Federal Government has encouraged law enforcement agencies across the United States to adopt a military approach to policing, complete with riot gear, helmets, armored vehicles, and military grade weapons, including these chemical agents.

The Final Report of the Task Force on 21st Century Policing delivered to President Obama in 2015 recommended “Law enforcement agencies should create policies and procedures for policing mass demonstrations that employ a continuum of managed tactical resources that are designed to minimize the appearance of a military operation and avoid using provocative tactics and equipment that undermine civilian trust.”⁵ Our New Orleans City Council must put an end to the use of military tactics, military uniforms, and military-grade weapons and vehicles. The use of tear gas is part, but only a part, of what must be prohibited **immediately**.

In Chief Ferguson’s news briefing on June 9, he stated that the use of “less-lethal” projectiles and tear gas was “something we never want to see happen.” That is exactly our demand: ban NOPD’s use of chemical agents, and destroy all stockpiles of them, in alignment with international law.

But that is not enough. We are years into concerted efforts to reform and improve the transparency and accountability of NOPD through a Federal Consent Decree; yet, not only were protesters injured by the use of military crowd control weapons, but NOPD once again attempted to cover up their own crimes.⁶ This conduct makes clear that the City of New Orleans must fundamentally reimagine how to foster public safety in a collaborative effort with its residents.

Thus, New Orleans must join the forward-thinking municipalities in our country⁷ which have pledged to cut funding and resources from police departments and other law enforcement and invest in things that actually make our communities safer: quality, affordable, and accessible housing, universal quality health care, including community-based mental health services, income support during the pandemic and full, meaningful, and well-compensated employment

⁵Final Report of the President’s Task Force on 21st Century Policing (May 2015), Recommendation 2.7, at https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf (last accessed June 9, 2020) (emphasis added).

⁶ This mass excessive use of force and the attempted cover-up comes nearly fifteen years after NOPD’s efforts to cover up unjustified deadly force against innocent citizens attempting to cross the Danziger Bridge to seek safety after Hurricane Katrina.

⁷ Jay Willis, “Minneapolis City Council Members Announce Intent To Disband The Police Department, Invest In Proven Community-Led Public Safety,” The Appeal, June 7, 2020, at <https://theappeal.org/minneapolis-city-council-members-announce-intent-to-disband-the-police-department-invest-in-proven-community-led-public-safety/> (last accessed June 9, 2020).

thereafter, community-based violence prevention programs, education, youth programming and youth employment.⁸

As a first step, we ask that City Council do the following:

- 1) Pass an ordinance to ban the use of militarized force against protesters, to eliminate stockpiles of military-grade weapons, including but not limited to chemical agents and other projectiles, and to defund and withdraw participation in police militarization programs.
- 2) Demand immediate transparency and accountability of the NOPD.
 - Require a thorough and prompt investigation of all complaints of police misconduct against protesters and terminate, without pension and without paid administrative leave, the employment of the police officers who used or authorized the use of tear gas and rubber bullets on protesters.
 - Guarantee that complainants and witnesses who come forward will not face retaliation and ensure stiff penalties for any officer who engages in retaliation.
 - Immediately answer public requests for information on the NOPD's response, including information on the NOPD's use of force policies and training materials, a list of all weapons and ammunition used on June 3, and all incident reports and communications relating to the protests.
- 3) Condemn the NOPD's response to Wednesday night's protests.
 - Condemn the use of militarized force against protesters.
 - Condemn the arrest of protesters and dismiss all charges against them.
- 4) Pass a resolution committing to sharp reductions in law enforcement in the City's 2021 Budget (including terminating the City's contracts with non-NOPD law enforcement agencies) and redirection of those funds to housing, health care (including community-based mental health services), income support, living wage employment, community-based violence prevention programs, education, youth programming, and youth employment.

We look forward to your response.

⁸ This is consistent with the Movement for Black Lives' policy platform of "Invest-Divest" which calls for "A reallocation of funds at the federal, state and local level from policing and incarceration to long-term safety strategies such as education, local restorative justice services, and employment programs." <https://m4bl.org/policy-platforms/invest-divest/>

Regards,

Roderick and Solange MacArthur Justice Center
SPLC Action Fund
Orleans Parish Prison Reform Coalition
The Justice and Accountability Center of Louisiana
American Civil Liberties Union of Louisiana
New Orleans Safety & Justice Challenge Community Advisory Group
rethink
Promise of Justice Initiative
Orleans Public Defenders
Louisiana Center for Children's Rights
Louisiana Violence Reduction Coalition
Dr. Vern K. Baxter
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cc: Mayor LaToya Cantrell
Superintendent Shaun Ferguson