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# “KETTLING” PROTESTERS IN THE BRONX

Systematic Police Brutality and Its Costs in the United States



# **“Kettling” Protesters in the Bronx**

**Systemic Police Brutality and Its Costs in the United States**

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Printed in the United States of America

ISBN: 978-1-62313-8639

Cover design by Rafael Jimenez

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SEPTEMBER 2020

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# Map



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## Summary

On the evening of June 4, 2020, about 300 people marched peacefully through Mott Haven, a low-income neighborhood in New York City's South Bronx, to protest police violence and systemic racism. Less than an hour into the march, and about 10 minutes before an 8 p.m. curfew went into effect, the marchers encountered scores of police officers with riot gear, including helmets, shields, and batons. Bicycle police used their bikes to form a wall and prevented the protesters from moving forward, while other officers pushed from behind – a tactic known as “kettling.” The protesters were trapped, with no way to disperse.

“We were being packed and packed like sardines,” one protester later recalled. Many started chanting, “Let Us Go!” and one person cried out, “You’re gonna kill us – I can’t breathe.”

Just after 8 p.m. and the start of the city-wide curfew – imposed a few days earlier due to looting in other areas– the police moved in on the protesters, unprovoked and without warning, whaling their batons, beating people from car tops, shoving them down to the ground, and firing pepper spray in their faces.

“Then it’s kind of all a blur,” one protester said, recounting how a police officer punched him in the face, another twisted his finger and broke it, and a third pulled off his Covid-19 face mask and doused him with pepper spray. “Then they dragged me on the ground and beat me with batons,” he said. “Somewhere in the process of being cuffed, I had a knee on my neck.”

As protesters cried out – some with blood dripping down their faces – the police began to arrest them. They forced people to sit on the street with their hands zip-tied behind their backs, at times so tight that their hands went numb. Clearly identified medics and legal observers were among those targeted, as police beat a number of them, detained them and obstructed their work.

Ambulances eventually arrived, and a medic who was zip-tied at the time said that he saw at least three people carried away on stretchers: “[They were] handcuffed to the stretchers, with head bandages, visibly bleeding from the bandage.”



The protest in Mott Haven was one of hundreds that broke out across New York City and the wider United States following the police killing of George Floyd in Minneapolis, Minnesota on May 25. Floyd's was the latest in a series of high-profile killings of unarmed Black people by police in the country. Law enforcement officers across the United States responded to many of these largely peaceful protests with violence, excessive force, and abuse. They beat up protesters, conducted mass arrests, and fired teargas, pepper spray, stun grenades, and rubber bullets to disperse and discourage protests.

This report is based on interviews or written accounts from 81 people who participated in the Mott Haven protest, interviews with 19 other community members, lawyers, activists, and city officials, and analysis of 155 videos that were recorded during the protest. Human Rights Watch also reviewed legal documents and sent questions to the New York Police Department, the NYPD, which replied in part (see Annexes). The NYPD did not reply to a Human Rights Watch request to interview senior NYPD officials.

The protest and the police response occurred in a neighborhood that has long experienced the damaging consequences of systemic racism and the government's overreliance on criminalization and policing to address societal problems – the exact reasons people were protesting on June 4. Mott Haven is a majority Black and brown community, with some of New York City's highest rates of poverty and homelessness, and it was among the areas hardest hit by the Covid-19 pandemic. Mott Haven has long been aggressively overpoliced for low-level crimes, and more complaints about the use of physical force by police officers have been made in Mott Haven's 40<sup>th</sup> precinct than in any of New York City's other 76 precincts.

Human Rights Watch found that the police response to the peaceful Mott Haven protest was intentional, planned, and unjustified. As one protester said: "What I saw that night in the Bronx was a systemic response. It was strategic. It was planned."

The NYPD's highest-ranking uniformed officer, Chief of Department Terence Monahan, was present during the action, along with at least 24 other uniformed supervisory officers – chiefs, lieutenants, captains, or inspectors in white shirts. In total, Human Rights Watch counted in the video footage well over 100 officers on the scene from multiple units, including those from local precincts in regular patrolmen gear, officers in riot gear, officers in black bicycle gear, plainclothes officers, and officers in brown vests. There were also officers from the Legal Bureau, the Technical Assistance Response Unit, and the Strategic Response Group.

An official from the Legal Bureau directed uniformed officers to arrest the legal observers – volunteers with identifiable badges and hats who document police conduct and help people who get arrested. The right of legal observers to document police conduct during protests is laid out in the NYPD Patrol Guide. Video footage captures the Legal Bureau official instructing other officers: “Legal Observers *can* be arrested. ...They are good to go!”

In the NYPD’s response to Human Rights Watch’s questions, the department said that “the intent of this assembly was to engage in violence and inflict harm,” but it did not use this alleged intent to justify the police intervention and arrests. Instead, the letter says that “upon 8 p.m.,” the demonstration “was unlawful under the Mayor’s Executive Order establishing the curfew,” and that the detention of non-essential workers “was lawful.”

The NYPD’s use of the curfew to justify its crackdown ignores the video recordings showing that the police kettled peaceful protesters before the curfew came into effect and blocked all paths to disperse.

The department also said that “legal observers did not enjoy an exemption as essential workers,” but the Mayor’s office had stated before the protest that legal observers were exempt from the curfew.

The NYPD did not respond to questions about its use of force against protesters and observers and has not presented any evidence to suggest that protesters were assaulting the police or others or harming public property.

The NYPD Commissioner Dermot Shea had previously confirmed the premeditated nature of the police operation, stating at a news conference the day after the protest: “We had a plan which was executed nearly flawlessly in the Bronx.” Shea described the protest as an attempt by “outside agitators” to “cause mayhem,” “tear down society,” and “injure cops.” Specific allegations that he made, including about a firearm and gasoline recovered from protesters, were later contradicted by other NYPD officials, as well as the New York Attorney General’s office and the Bronx District Attorney’s office. The firearm Shea highlighted was recovered from an alleged gang member and his girlfriend about a half mile away from the march and over an hour before it had started. The gasoline he referenced had been found the night before.

The protest in Mott Haven was one of the many community-driven responses to the police killing of George Floyd. A collective of New York City-based grassroots groups, led primarily by Black and brown women from the Bronx and known as the “FTP Formation,” organized

the protest, which they called “FTP4.” These groups are dedicated to police and prison abolition, and they fight for other causes like racial justice, decolonization, anti-gentrification, and anti-capitalism. They also organize mutual aid projects to support community members in the Bronx. For these groups, FTP has had different meanings, including “Fuck the Police,” “Feed the People,” and “Free the People.”

The coalition had organized previous “FTP” protests about over-policing in New York City subways, viewing the hiring of more transit officers and a crackdown on fare evasion as “an attack on the poor in this city.” During the first two demonstrations in November 2019 and the third in January 2020, protesters sometimes engaged in mass fare evasion that garnered significant attention and likely triggered increased NYPD scrutiny of the groups’ activities.

Some of the flyers for the FTP4 protest depicted a police car burning and a cartoon of a man jumping over a police officer. But a Code of Conduct for the protest was also posted online that denounced “goofy irresponsible adventurism” and asked protesters to “follow the lead of the people from the hood [neighborhood].” A flyer about the protest directed demonstrators not to bring weapons. Human Rights Watch is not aware of any threats or acts of violence or vandalism by the protest organizers or protesters during the FTP4 protest in Mott Haven. To the contrary, the protest was peaceful until the police responded with violence.

In total, the authorities arrested and brought to jail at least 263 people during the protest – more than from any other protest in New York City since the killing of George Floyd. The zip-tied protesters were forced to sit in the street for up to an hour as they waited for police buses and vans to collect them. Some were eventually taken to the 40<sup>th</sup> and 41<sup>st</sup> precincts in the Bronx, but most were taken to mass arrest processing centers in Queens and Brooklyn, making it harder for lawyers and families to track them down and for protesters to return home once they were released. Most were charged with Class B misdemeanors for curfew violations or unlawful assembly, punishable by up to 90 days in jail or one year of probation, and up to \$500 in fines. They were given summonses or desk appearance tickets (DATs), with court dates in early October.

Protesters said that the process took hours, from waiting for the police vans, being transported, waiting to be processed, and then being held in cramped cells. They were not offered food and were given little or no water. Many said their face masks had fallen off during arrest, and they were not given new masks, hand sanitizer, or other protections from Covid-19. They said most police officers at the jails were also not wearing masks.

Some of those arrested during the protest were released late on the night of June 4 or in the early hours of June 5; others were held into the afternoon of the next day. One person was held for a full week.

The police also interfered with those providing support for arrested people, preventing them from waiting outside jails and ignoring their inquiries about those who were detained. Jail support volunteers help make sure that everyone arrested is accounted for, track them through the system, provide food and water to those being released, and assist them in returning home. They had permission from the mayor's office to be out during the curfew.

Human Rights Watch documented at least 61 cases of protesters, legal observers, and bystanders who sustained injuries during the police crackdown in Mott Haven, including lacerations, a broken nose, lost tooth, sprained shoulder, broken finger, split lip, black eyes and bruises, difficulty breathing and seeing because of pepper spray, and potential nerve damage due to the tightness of the zip ties.

Separately, based on analysis of the video footage, Human Right Watch counted 21 incidents of police beating protesters with batons, in many cases while standing atop a parked car; 11 incidents of police officers punching or kicking protesters; 19 incidents of police slamming, tackling, or dragging protesters; 14 incidents of police firing pepper spray directly at participants' faces; four incidents of police throwing bikes against protesters; and two incidents where police restrained participants with a knee to the face or upper neck.

Most of those injured did not receive any immediate medical care, as police arrested or obstructed volunteer "street medics" who deployed to the protest – healthcare workers dressed in scrubs with red cross insignia. Dozens of people spent hours in detention with untreated wounds and their hands bound behind their backs. They were not given water to wash off the blood. A legal observer described the injuries they observed as people arrested during the protest were released: "Several...had open gashes on their heads, most had bruises and/or cuts, and one had hands that were purple due to the tightness of the cuffs."

Human Rights Watch is not aware of any police officer who sustained injuries during the protest, based on our interviews with those present and our review of 155 videos. The NYPD did not respond to a Human Rights Watch question about whether any police officers were injured during the protest.

Referring to “the early days of the George Floyd demonstrations,” the NYPD said that “[n]early 400 NYPD personnel were injured during the protests and subsequent riots” and that “65% of our injured personnel had to be treated at a hospital.”

Protesters and observers interviewed by Human Rights Watch said that the police response in Mott Haven was unlike anything they had seen during protests in other parts of the city. Many said they believed the police wanted to send a strong warning to the organizers – outspoken critics of police violence and racism – and to the broader South Bronx community, which has long experienced police abuses and the effects of systemic racism. One protester called it “the militarized policing of people of color,” with the police targeting “one of the poorest, most low-income communities not only in the city, but in the country” during a march in which “most of the participants...were people of color.”

Police conduct during the Mott Haven protest on June 4 amounts to serious violations of international human rights law which the federal, state, and local governments are obligated to observe. These include law enforcement’s excessive use of force, violations of the rights to free expression and peaceful assembly, arbitrary arrests and detentions, and cruel and degrading treatment of detainees. Legal observers and volunteers providing jail support are human rights defenders who are protected under international human rights law and should never be targeted for this work. The attacks on street medics, the obstruction of their work, and the denial of medical care to injured protesters amount to violations of the right to health.

Detaining people in cramped conditions amidst the Covid-19 pandemic posed serious risks to public health and could also be considered a right-to-health violation. While protest organizers handed out masks at the start of the march, and most protesters appear to have been wearing masks during the protest, many of the police officers were not wearing masks, and they pulled the masks off some of the protesters as they were being arrested. Human Rights Watch has urged governments around the world to reduce their jail and prison populations, given the heightened risk of Covid-19 for detainees and staff. For the same reason, authorities should only engage in custodial arrests when strictly necessary. Especially given that those arrested during the Mott Haven protest were not engaged in violence and presented no immediate threat to commit violence, there was no justification for custodial arrests.

Police conduct during the Mott Haven protest appears to also violate civil rights protections of the US Constitution and the NYPD’s own Patrol Guide.

The financial costs to the NYPD and New York City taxpayers of the police crackdown on the protest will likely reach into the millions of dollars. Initially, there are the costs to deploy two helicopters, scores of police officers and supervisors that day – including significant overtime costs – as well as the costs for arresting, transporting, processing, and potentially prosecuting the 263 people who were arrested.

The largest cost, however, will likely come from the resulting misconduct complaints, investigations, and lawsuits. With at least 98 claims filed with the Comptroller's Office since the protest, Human Rights Watch estimates that lawsuits related to the Mott Haven protest could end up costing New York City taxpayers several million dollars.

Despite the harm caused to the protesters, and violations of international human rights law, constitutional civil rights protections, and the NYPD's guidelines, police officers and their supervisors are unlikely to face any disciplinary or legal consequences. This is due to a deeply entrenched system that prevents meaningful scrutiny and allows officers and police departments to commit abuses with impunity.

Existing structures in the United States to hold police officers to account for misconduct and abuses are largely ineffective. Over the years, legislators have passed laws, judges have imposed doctrines, and police departments and prosecutors have implemented policies and practices that systematically protect officers and police departments from meaningful scrutiny. The NYPD is tasked with investigating and disciplining its own employees, and the department has incentives to exonerate individual officers to shield the department from liability, to insulate their behavior from exposure to scrutiny that might limit police power, and to validate its own tactics and methods. Powerful police unions negotiate contracts that give officers protection from discipline and accountability.

In recent years, some limited and often superficial reforms have been implemented to try to address police misconduct and improve accountability within the NYPD, such as requirements around de-escalation and anti-racial profiling training, and the use of body cameras. As with similar incremental reforms in police departments across the country, however, these efforts have failed to change the culture of policing, address systemic racism, or improve accountability for police misconduct.

Instead of cracking down on peaceful protesters and stifling their fundamental freedoms and calls for change, policymakers and elected officials in New York City and across the country should listen to their demands. That requires comprehensive reforms, structural changes, and a reimagining of public safety.

State and local officials should take meaningful action to reduce the role of police in addressing societal problems, including through significant decreases to the size and budget of the police force. They should invest instead in the real needs of communities, including through support to services that directly address underlying issues such as substance use disorders, homelessness, and poverty, and that improve access to quality education, health care, and mental health support. They should empower independent accountability and oversight mechanisms to provide a genuine check on police misconduct and abuse, create a new mechanism to allow for real community engagement in the selection process of the NYPD commissioner, and work to end the detrimental role of police contracts that shield officers who violate rights.

As one of the protesters said in a live video post at the start of the protest: “We have tons of police cars. We have all these police, waiting in all these helmets and all of that stuff, while people working in a hospital don’t even have masks. Some of those nurses and doctors are wearing garbage bags. Why are we giving \$6 billion to the NYPD, really, instead of cutting down that money and bringing it to the impacted community, the underserved community?”

Local governments throughout the United States should do what it takes to end the structural racism and systemic police abuse that people in Mott Haven and communities like it have experienced for far too long.

## Methodology

For this report, Human Rights Watch interviewed 17 participants and observers of the Mott Haven protest on June 4, 2020, including 13 protesters, a legal observer, a medic, and two journalists. Human Rights Watch also reviewed testimony provided to the New York Attorney General from 13 additional legal observers who were present at the protest and 19 additional protesters, as well as accounts given by nine additional protesters in legal documents, and accounts given to the *Gothamist* and other media outlets by 23 additional protest participants. In total, Human Rights Watch interviewed or reviewed accounts from 81 people at the protest.

Human Rights Watch also interviewed six people who live or work in Mott Haven but were not at the protest, five representatives from New York City-based legal rights and justice groups, two lawyers representing protest participants, a New York State senator who represents parts of the Bronx, and an analyst at the New York City Independent Budget Office. Human Rights Watch spoke with three representatives of the New York Attorney General's office and a representative of the Bronx District Attorney's office, who followed up by email with details about the arrests.

Human Rights Watch analyzed 155 videos that were recorded during the protest, some of which were posted on social media and others that were shared directly with Human Rights Watch. We also reviewed social media posts related to the protest and police scanner recordings from the 40<sup>th</sup> and 41<sup>st</sup> precincts on the evening of June 4. We reviewed accounts of the Mott Haven protest prepared by the National Lawyers Guild, Brooklyn Defenders, Bronx Defenders, the Legal Aid Society, and the New York Civil Liberties Union.

Human Rights Watch sent a letter to New York Police Department (NYPD) Commissioner Dermot Shea on July 31, with a summary of our findings, a list of questions, and a request for a meeting. The department's deputy commissioner for legal matters, Ernest Hart, sent a letter to Human Rights Watch on September 16 with a partial response to our questions (see Annexes). Senior department officials did not respond to our request for meetings. Human Rights Watch was unable to identify police officers present in Mott Haven during the June 4 protest who were willing to speak with us.

Human Rights Watch sent press requests and Freedom of Information Law (FOIL) requests to the Civilian Complaint Review Board (CCRB), the New York City Comptroller's Office, the Metropolitan Transit Authority (MTA), and the NYPD. The CCRB responded to our request



with an overview of 17 complaints made to the CCRB regarding 99 allegations of police misconduct stemming from the Mott Haven protest on June 4. The Comptroller's Office responded with an overview of 98 claims that were filed as of September 8, 2020 related to the Mott Haven protest. The MTA acknowledged our request but had not responded at time of writing. The NYPD denied our request, and we have appealed.

Most interviews were conducted over the phone; seven interviews were conducted in person in Mott Haven. Researchers informed all interviewees about the purpose and voluntary nature of the interviews, and the ways in which Human Rights Watch would use the information, and obtained consent from all interviewees, who understood they would receive no compensation for their participation. Human Rights Watch has withheld the names of some individuals featured in the report at their request.

# I. Background

## Nationwide Protests Against Police Brutality and Systemic Racism

On May 25, 2020, a police officer in Minneapolis, Minnesota dug his knee into the neck of George Floyd and held it there for over eight minutes until he died. Two other officers put their bodyweight on Floyd's back and legs, while another officer guarded the scene, keeping onlookers away. Floyd, an unarmed Black man, was pinned down merely on the suspicion that he may have used a counterfeit \$20 bill. The more than eight minutes leading to Floyd's death were recorded on video by bystanders and the footage, widely circulated on social media, sparked outrage and protests across the United States and around the world.<sup>1</sup>

Floyd's killing was just the latest in a series of high-profile killings of unarmed Black people by police in the United States. It occurred less than two months after police in Louisville, Kentucky, shortly after midnight, barged into the home of Breonna Taylor, a 26-year-old emergency room technician, and shot her dead.<sup>2</sup> Police in the US kill about 1,100 people each year, a disproportionately large number of them Black.<sup>3</sup> But they also engage in massive applications of lower-level violence, ranging from police dog bites and the use of so-called less-lethal weapons like batons, pepper spray, and Tasers to conduct aggressive, harassing, and unnecessary stops and searches, also directed disproportionately at Black people. Local, state, and federal laws and policies, and the protections in police contracts, have allowed police departments to investigate their own alleged misconduct and remove or restrict accountability mechanisms – fueling a culture of impunity among police forces and encouraging further violence and abuse.<sup>4</sup>

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<sup>1</sup> Dionne Searcy and David Zucchino, "Protests Swell Across America as George Floyd is Mourned Near His Birthplace," *New York Times*, June 6, 2020, <https://www.nytimes.com/2020/06/06/us/george-floyd-memorial-protests.html> (accessed August 18, 2020).

<sup>2</sup> Richard A. Oppel Jr. and Derrick Bryson Taylor, "Here's What You Need to Know About Breonna Taylor's Death," *New York Times*, August 13, 2020, <https://www.nytimes.com/article/breonna-taylor-police.html> (accessed August 17, 2020).

<sup>3</sup> This number is just an estimate and may be a major underestimate, given that there is no effective data collection on police killings or police violence in general. "Mapping Police Violence," MappingPoliceViolence.org, <https://mappingpoliceviolence.org> (accessed August 31, 2020); "The Counted: People killed by police in the U.S.," *Guardian*, <https://www.theguardian.com/us-news/ng-interactive/2015/jun/01/the-counted-map-us-police-killings> (accessed August 31, 2020); see also, Julie Tate, Jennifer Jenkins, and Steven Rich, "Fatal Force," *Washington Post*, August 6, 2020, <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/> (accessed August 6, 2020). The *Washington Post* tracker strictly documents police shootings resulting in death.

<sup>4</sup> "A Roadmap for Re-imagining Public Safety in the United States," Human Rights Watch, August 12, 2020, <https://www.hrw.org/news/2020/08/12/us-14-recommendations-fundamental-police-reform>.

Police violence across the US is inextricably linked to deep and persisting racial inequities and economic class divisions, with many laws and policies dating back to the eras of slavery and colonialism that have prioritized policing and criminalization as the primary state response to a range of societal problems.

The Covid-19 pandemic – which infected almost six million people and killed over 175,000 in the US between March and August 2020, making it the country with the greatest human loss worldwide – has laid bare these devastating racial inequalities.<sup>5</sup> The virus has harmed Black people in the US at three times the rate of white people, with disparities across all age groups and areas of the country.<sup>6</sup> This difference should not be surprising: Black life expectancy is 3.5 years younger than white life expectancy nationally.<sup>7</sup> Black infants are more than twice as likely to die as white infants—making the disparity worse than it was in 1850, when Black people were enslaved – and Black women in the US have been three times more likely to die of preventable pregnancy-related causes than white women, and are nearly twice as likely to die from cervical cancer.<sup>8</sup>

In this context – as the country was enduring the effects of over two months of lockdowns, economic devastation, overwhelmed healthcare systems, and death from Covid-19 that all disproportionately impacted Black Americans – George Floyd’s killing sparked one of the largest protest movements in the country’s history.<sup>9</sup> Tens of millions of protesters went to the streets in all 50 states – showing their support for the Black Lives Matter movement, demanding an end to systemic racism and police violence, and calling on the government

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<sup>5</sup> “Coronavirus in the US: Latest Map and Case Count,” *New York Times*, last updated August 26, 2020, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html> (accessed August 26, 2020).

<sup>6</sup> Richard A. Oppel Jr., Robert Gebeloff, K.K. Rebecca Lai, Will Wright and Mitch Smith, “The Fullest Look Yet at the Racial Inequality of Coronavirus,” *New York Times*, July 5, 2020, <https://www.nytimes.com/interactive/2020/07/05/us/coronavirus-latino-african-americans-cdc-data.html> (accessed August 17, 2020).

<sup>7</sup> Elizabeth Arias and Jiaquan Xu, “National Vital Statistics Reports, United States Live Tables, 2017,” US Department of Health and Human Services, June 24, 2019, [https://www.cdc.gov/nchs/data/nvsr/nvsr68/nvsr68\\_07-508.pdf](https://www.cdc.gov/nchs/data/nvsr/nvsr68/nvsr68_07-508.pdf) (accessed September 1, 2020).

<sup>8</sup> Jacqueline Howard, “US infant mortality rates decline, CDC study says, but Black infants still twice as likely to die,” *CNN*, June 25, 2020, <https://www.cnn.com/2020/06/25/health/age-women-birth-rising-wellness/index.html> (accessed August 17, 2020); “US: Cervical Cancer Deaths Up for Black Women,” Human Rights Watch news release, November 29, 2018, <https://www.hrw.org/news/2018/11/29/us-cervical-cancer-deaths-black-women>.

<sup>9</sup> Larry Buchanan, Quoctrung Bui, and Jugal Patel, “Black Lives Matter May Be the Largest Movement in U.S. History,” *New York Times*, July 3, 2020, <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html> (accessed August 17, 2020).

to drastically reduce police department budgets and invest instead in basic community needs.<sup>10</sup>

The police in many places responded to these protests with unnecessary and excessive force and other abuses: beating up protesters, conducting mass arbitrary arrests, and deploying police and national guard forces to discourage protests.<sup>11</sup> In numerous instances, police used less-lethal weapons to disperse protesters, including teargas, pepper spray, stun grenades, and rubber bullets – sometimes firing directly at protesters, resulting in serious injuries.<sup>12</sup> In several cases, police used "kettling" tactics to encircle and trap protesters, then arrest them, often unnecessarily using less-lethal weapons. Law enforcement officers have also used their vehicles as weapons, slamming car doors into protesters and in at least one instance hovering helicopters dangerously low above crowds, using the rotor wash to disperse protesters, snapping tree branches, and sending debris flying.<sup>13</sup>

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<sup>10</sup> Black Lives Matter is a decentralized movement advocating for an end to systemic racism, white supremacy, police brutality, and other forms of violence or harms inflicted on Black communities by state institutions and vigilante groups. It was formed in 2013 following the acquittal of George Zimmerman for the murder of Trayvon Martin, a 17-year-old Black teenage boy. It includes a network of activists and organizers with chapters across the United States and around the world, and the phrase #BlackLivesMatter has become a popular hashtag and a rallying cry for nonviolent protests and other forms of civil disobedience. See Black Lives Matter, <https://blacklivesmatter.com/about/> (accessed September 10, 2020). See also Larry Buchanan, Quoc Trung Bui, and Jugal Patel, "Black Lives Matter May Be the Largest Movement in U.S. History," *New York Times*, July 3, 2020, <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html> (accessed August 17, 2020).

<sup>11</sup> Amnesty International, "USA: Law enforcement violated Black Lives Matter protesters' human rights, documents acts of police violence and excessive force," August 4, 2020, <https://www.amnesty.org/en/latest/news/2020/08/usa-law-enforcement-violated-black-lives-matter-protesters-human-rights/> (accessed September 10, 2020); Belkis Wille and Ida Sawyer, "The US Commits the Same Abuses it Condemns Abroad," Human Rights Watch commentary, June 29, 2020, <https://www.hrw.org/news/2020/06/29/us-commits-same-abuses-it-condemns-abroad>; "ACLU Statement on Trump Tweet Directing the National Guard to Murder Protesters in Minneapolis," ACLU press release, May 29, 2020, <https://www.aclu.org/press-releases/aclu-statement-trump-tweet-directing-national-guard-murder-protesters-minneapolis> (accessed September 10, 2020); "ACLU Comment on Federal Response to Portland Protests," ACLU press release, July 17, 2020, <https://www.aclu.org/press-releases/aclu-comment-federal-response-portland-protests> (accessed September 10, 2020); "ACLU Sues Federal Agents in Portland," ACLU press release, July 17, 2020, <https://www.aclu.org/press-releases/aclu-sues-federal-agents-portland> (accessed September 10, 2020); "Trump threatens use of military force," *Al Jazeera*, June 9, 2020, <https://www.aljazeera.com/programmes/newsfeed/2020/06/trump-threatens-military-force-200609125917432.html> (accessed August 17, 2020).

<sup>12</sup> "In Pictures: Anti-racism protestors pepper-sprayed in the US," *Al Jazeera*, June 23, 2020, <https://www.aljazeera.com/indepth/inpictures/pictures-anti-racism-protesters-pepper-sprayed-200623084959476.html> (accessed August 17, 2020).

<sup>13</sup> Chad Loder's Twitter page, <https://twitter.com/chadloder/status/1267048521787531267> (accessed August 26, 2020); Richard Weir, "Reckless Use of US Helicopters to Intimidate Protestors," Human Rights commentary, June 5, 2020, <https://www.hrw.org/news/2020/06/05/reckless-use-us-helicopters-intimidate-protesters> (accessed August 17, 2020).

Many of those arrested during protests across the country said they were held for hours, and sometimes more than a day, in crowded, filthy conditions with no protection from Covid-19. Many were not informed of their rights or the reason for arrest, and they were not allowed to make a phone call. Upon release, many were given a summons to appear in court for participating in an unlawful assembly, blocking traffic, and other minor offenses.<sup>14</sup>

Scores of journalists were among those whom the police assaulted, arrested, or otherwise harassed during the protests – sometimes on live camera.<sup>15</sup> The US Press Freedom Tracker documented over 700 incidents in the US involving journalists during protests between May 26 and August 18, the majority committed by police, including 55 arrests, 192 assaults (160 by the police), and 45 incidents of newsroom and equipment damage.<sup>16</sup>

Legal observers from the National Lawyers Guild – who attend protests to document potential human rights violations and provide support to those arrested – were assaulted, teargassed, and arrested while monitoring protests in at least a dozen cities, despite their visible neon green hats and other identifying markers.<sup>17</sup> One observer in Sacramento, California, was shot in the face with a rubber bullet and hospitalized with a concussion, while several observers in Detroit, Michigan were beaten with batons, punched, teargassed, and then arrested while trying to record the names of arrested protesters. “Street medics” deployed to provide emergency medical support to protesters injured during the demonstrations have also been targeted.<sup>18</sup>

New York City had some of the largest protests, which the New York Police Department (NYPD) often responded to with violence and abuse. Starting on May 28, protests erupted

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<sup>14</sup> Philip McHarris, “The People Arrested for Protesting Police are in Danger,” *Slate*, June 26, 2020, <https://slate.com/news-and-politics/2020/06/police-punish-protesters.html> (accessed September 10, 2020); Keri Blakinger and Abbie Vanisckle, “We Were Gassed, Arrested, and Maybe Exposed to Covid-19,” The Marshall Project, June 4, 2020, <https://www.themarshallproject.org/2020/06/04/we-were-gassed-arrested-and-maybe-exposed-to-covid-19> (accessed September 10, 2020); Yasmin Tayag, “The Covid-19 Threat to Protesters Who Get Arrested and Jailed,” *Medium*, June 5, 2020, <https://coronavirus.medium.com/the-covid-19-threat-to-protesters-who-get-arrested-and-jailed-aof2f96c7b6c> (accessed September 10, 2020); Ida Sawyer, “New York Protestors Jailed in Crowded, Filthy Conditions,” Human Rights Watch commentary, June 9, 2020, <https://www.hrw.org/news/2020/06/09/new-york-protesters-jailed-crowded-filthy-conditions>.

<sup>15</sup> Laurin-Whitney Gottbrath and Patrick Strickland, “Blinded, arrested: Police attack journalists covering US protests,” *Al Jazeera*, June 16, 2020, <https://www.aljazeera.com/indepth/features/blinded-arrested-police-attack-journalists-covering-protests-200616023545157.html> (accessed August 17, 2020).

<sup>16</sup> U.S. Press Freedom Tracker homepage, <https://pressfreedomtracker.us/> (accessed August 17, 2020).

<sup>17</sup> “Police Targeting NLG Legal Observers at Black Lives Matters Protests,” National Lawyers Guild press release, June 7, 2020, <https://www.nlg.org/police-targeting-nlg-legal-observers-at-black-lives-matter-protests/> (accessed August 17, 2020).

<sup>18</sup> Jonathan Pedneault, “Police Targeting ‘Street Medics’ at US protests,” Human Rights Watch commentary, June 7, 2020, <https://www.hrw.org/news/2020/06/17/police-targeting-street-medics-us-protests> (accessed August 17, 2020).

across the city for four days, resulting in multiple confrontations with police and almost 1,000 arrests.<sup>19</sup> In some neighborhoods, individuals engaged in looting, which prompted New York State's governor, Andrew Cuomo, and the city's mayor, Bill de Blasio, to impose an 11 p.m. curfew on June 1, the city's first curfew since 1943. That night, as protests continued in some neighborhoods, there was looting in midtown Manhattan, Soho, and on Fordham Road in the Bronx.<sup>20</sup> Some accounts describe officers chasing and assaulting largely peaceful protesters while allowing looters to damage and destroy stores without intervention.<sup>21</sup>

New York State Senator Gustavo Rivera, who represents northern Bronx, told Human Rights Watch: "They were focusing police presence where people were peacefully protesting and leaving places like my district, where organized looting was happening that had absolutely nothing to do with protests or Black Lives Matter, completely bereft of police."<sup>22</sup>

Continued looting in certain areas reportedly prompted Mayor de Blasio to expand the curfew from 8 p.m. for the next week. For the next two nights, on June 2 and 3, protests continued despite the curfew, with inconsistent responses from the NYPD. Protesters were allowed to continue past the curfew in many instances, whereas the police trapped and arrested others. On June 3, there were no reports of burglaries or vandalism of businesses and only 186 protest-related arrests across all five boroughs, with less than 1 percent being charged with felonies – a sharp decrease from previous nights.<sup>23</sup>

On the evening of June 4, the protest in Mott Haven was met with one of the NYPD's most aggressive and abusive responses and resulted in more arrests than any other protest in New York since Floyd's killing.

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<sup>19</sup> New York State Office of the Attorney General, "Preliminary Report on the New York City Police Department's Response to Demonstrations Following the Death of George Floyd," July 2020, [ag.ny.gov/sites/default/files/2020-nypd-report.pdf](https://ag.ny.gov/sites/default/files/2020-nypd-report.pdf) (accessed August 25, 2020).

<sup>20</sup> Ibid.; Amy Yensi, "On Fordham Road in the Bronx, Looting Leaves Store Owners Shattered," *New York 1*, June 5, 2020, <https://www.ny1.com/nyc/all-boroughs/news/2020/06/05/fordham-road-hit-hard-by-looters-amid-george-floyd-protest-unrest-across-nyc-> (accessed August 26, 2020).

<sup>21</sup> Sydney Pereira and Jake Offenhartz, "Protesters March During NYC's First Curfew in Decades, Looting Continues Despite Police Increase," *Gothamist*, June 2, 2020, <https://gothamist.com/news/protesters-march-during-nycs-first-curfew-decades-looting-continues-despite-police-increase> (accessed August 26, 2020).

<sup>22</sup> Human Rights Watch telephone interview with Gustavo Rivera, New York State Senator, August 27, 2020.

<sup>23</sup> New York State Office of the Attorney General, "Preliminary Report on the New York City Police Department's Response to Demonstrations Following the Death of George Floyd," July 2020, <https://ag.ny.gov/sites/default/files/2020-nypd-report.pdf> (accessed September 24, 2020).

## Poverty and Policing in Mott Haven

Mott Haven in the South Bronx is part of the country's poorest urban congressional district, with more than a third of its residents living in poverty, and a poverty rate twice the city's average.<sup>24</sup> About 82 percent of Mott Haven residents are people of color, mostly Black and Latinx.<sup>25</sup> The neighborhood has experienced some of the most damaging consequences of systemic racism, police violence, and the government's overreliance on criminalization and policing to address societal problems.

This has come to the fore in stark terms during the Covid-19 pandemic. Of the city's five boroughs, the Bronx has seen the highest rates of coronavirus cases, hospitalizations, and deaths. Residents there have been twice as likely to die from Covid-19 than those in other boroughs.<sup>26</sup>

Even before Covid-19, the South Bronx was at the bottom of health outcome ratings for New York State, with disproportionately high rates of premature deaths as well as diabetes, asthma, and hypertension – which are all linked to coronavirus complications.<sup>27</sup> About 12 percent of residents in Mott Haven and neighboring Melrose neighborhood do not have health insurance, compared to about 8 percent in the US population overall.<sup>28</sup>

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<sup>24</sup> David Gonzalez, "The City Fumbled It: How 4 Families Took On the Virus," *New York Times*, June 24, 2020, <https://www.nytimes.com/2020/06/24/nyregion/coronavirus-public-housing-new-york.html> (accessed August 18, 2020). New York Department of Health, "New York City Health Provider Partnership Bronx Community Needs Assessment," November 14, 2014, [https://www.health.ny.gov/health\\_care/medicaid/redesign/dsrip/pps\\_applications/docs/st\\_barnabas\\_hosp\\_dba\\_sbh\\_health\\_system/3.4\\_st\\_barnabas\\_cna.pdf](https://www.health.ny.gov/health_care/medicaid/redesign/dsrip/pps_applications/docs/st_barnabas_hosp_dba_sbh_health_system/3.4_st_barnabas_cna.pdf) (accessed August 18, 2020). See also, New York Department of Health, "New York City Health Provider Partnership Bronx Community Needs Assessment," November 14, 2014, [https://www.health.ny.gov/health\\_care/medicaid/redesign/dsrip/pps\\_applications/docs/st\\_barnabas\\_hosp\\_dba\\_sbh\\_health\\_system/3.4\\_st\\_barnabas\\_cna.pdf](https://www.health.ny.gov/health_care/medicaid/redesign/dsrip/pps_applications/docs/st_barnabas_hosp_dba_sbh_health_system/3.4_st_barnabas_cna.pdf) (accessed August 18, 2020). See also Ginia Bellafante, "A Bookstore, Finally, Comes to the Bronx," *New York Times*, <https://www.nytimes.com/2019/04/25/nyregion/bronx-bookstore.html> (accessed August 18, 2020).

<sup>25</sup> Lucy Block, "How is Affordable Housing Threatened in Your Neighborhood? 2020," Association for Neighborhood and Housing Development report, <https://anhd.org/report/how-affordable-housing-threatened-your-neighborhood-2020> (accessed August 18, 2020).

<sup>26</sup> Ese Olumhense and Ann Choi, "Bronx Residents Twice as Likely to Die From COVID-19 in NYC," *The City*, April 3, 2020, <https://www.thecity.nyc/health/2020/4/3/21210372/bronx-residents-twice-as-likely-to-die-from-covid-19-in-nyc> (accessed August 18, 2020).

<sup>27</sup> Ibid.

<sup>28</sup> Lucy Block, "How is Affordable Housing Threatened in Your Neighborhood? 2020," Association for Neighborhood and Housing Development report, <https://anhd.org/report/how-affordable-housing-threatened-your-neighborhood-2020> (accessed August 18, 2020). See also Edward Berchick, Jessica Barnett, and Rachel Upton, "Health Insurance Coverage in the United States: 2018," United States Census Bureau November 8, 2019, <https://www.census.gov/library/publications/2019/demo/p60-267.html#:~:text=In%202018%2C%208.5%20percent%20of,7.9%20percent%20or%2025.6%20million> (accessed September 10, 2020).

The Bronx is home to a quarter of the city's 400,000 public housing residents, who live in crowded and chronically underfunded apartment building complexes that saw little government support for sanitation and cleaning at the start of the pandemic.<sup>29</sup> Mott Haven also has a disproportionately high number of homeless shelters and drug treatment centers that other neighborhoods in New York have rejected.<sup>30</sup> The Bronx has had the highest rates of drug overdose deaths compared to other boroughs, with Mott Haven being one of the worst affected neighborhoods.<sup>31</sup>

Education indicators are also lower than in other parts of the city. School District 9 in the South Bronx has the lowest high school graduation rate and the highest dropout rate in the state.<sup>32</sup> In Mott Haven, 12.7 percent of people 25 and older have not attended any high school.<sup>33</sup> School District 9 also ranks number one in the state for the highest percentage of homeless students: 18 percent of Mott Haven students in kindergarten through high school are homeless, and 7.7 percent were formerly homeless.<sup>34</sup>

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<sup>29</sup> David Gonzalez, "‘The City Fumbled It’: How 4 Families Took On the Virus," *New York Times*, June 24, 2020, <https://www.nytimes.com/2020/06/24/nyregion/coronavirus-public-housing-new-york.html> (accessed August 18, 2020); Samar Khurshid, "AS NYCHA Teeters, Calls for More Funding in City and State Budgets," *Gotham Gazette*, March 17, 2020, <https://www.gothamgazette.com/state/9216-calls-more-nycha-funding-in-city-state-budgets-new-york-public-housing> (accessed August 18, 2020); Ese Olumhense and Ann Choi, "Bronx Residents Twice as Likely to Die From COVID-19 in NYC," *The City*, <https://www.thecity.nyc/health/2020/4/3/21210372/bronx-residents-twice-as-likely-to-die-from-covid-19-in-nyc> (accessed August 18, 2020); David Cruz, "Map: Covid-19 Death Rate in NYCHA Developments Far Outpaces that of NYC," *Gothamist*, May 20, 2020, <https://gothamist.com/news/map-covid-19-death-rate-nycha-developments-far-outpaces-nyc> (accessed August 18, 2020).

<sup>30</sup> Jarrett Murphy, "Data Drop: Which NYC Neighborhoods Host the Most Homeless-Shelter Beds?" *City Limits*, <https://citylimits.org/2019/09/10/data-drop-which-nyc-neighborhoods-host-the-most-homeless-shelter-beds/> (accessed August 18, 2020); David Gonzalez, "‘The City Fumbled It’: How 4 Families Took On the Virus," *New York Times*, June 24, 2020, <https://www.nytimes.com/2020/06/24/nyregion/coronavirus-public-housing-new-york.html> (accessed August 18, 2020).

<sup>31</sup> New York City Health Department, "Unintentional Drug Poisoning (Overdose) Deaths in New York City in 2018," August 2019, <https://www1.nyc.gov/assets/doh/downloads/pdf/epi/databrief116.pdf> (accessed August 18, 2020).

<sup>32</sup> "Diploma Disparities: High School Graduation Rates in New York City," New York City Comptroller's Office, September 22, 2016, <https://comptroller.nyc.gov/reports/diploma-disparities-high-school-graduation-rates-in-new-york-city/> (accessed August 30, 2020). Just 72 percent of adults 25 and older in the Bronx are high school graduates, compared to 87 percent across New York City. Only 20 percent in the Bronx have a bachelor's degree or higher, compared to 37 percent across the city. United States Census Bureau, "QuickFacts: Bronx County (Bronx Borough), New York; New York City, New York," <https://www.census.gov/quickfacts/fact/table/bronxcountybronxboroughnewyork,newyorkcitynewyork/EDU635218> (accessed August 15, 2020). See 2017-18 New York graduation rates by school district, <http://lohud.nydatabases.com/database/2017-18-new-york-graduation-rates-school-district> (accessed August 30, 2020).

<sup>33</sup> "Mott Haven Demographics," Point2, <https://www.point2homes.com/US/Neighborhood/NY/Bronx/Mott-Haven-Demographics.html> (accessed August 31, 2020); Statistical Atlas, "Educational Attainment in Mott Haven, New York, New York," <https://statisticalatlas.com/neighborhood/New-York/New-York/Mott-Haven/Educational-Attainment> (accessed August 31, 2020).

<sup>34</sup> Institute for Children, Poverty and Homelessness (ICPH), "On the Map: The Atlas of Student Homelessness in New York City," 2018, [https://www.icphusa.org/wp-content/uploads/2018/08/Final\\_Atlas-Homelessness\\_September20\\_update.pdf](https://www.icphusa.org/wp-content/uploads/2018/08/Final_Atlas-Homelessness_September20_update.pdf) (accessed August 18, 2020). See also, Department of Education dataset and map at Advocates for Children of New York, "New Data Show Number of NYC Students who are Homeless Topped 100,000 for the Fourth Consecutive Year," October 28, 2019, <https://www.advocatesforchildren.org/node/1403> (accessed September 22, 2020).



Districts in southern and northwestern Bronx have also ranked highest in the city for evictions, rent burden (households paying 30 percent or more of their income towards gross rent), serious housing violations, and percent increase in residential sales prices.<sup>35</sup> In April 2020, residents in two Mott Haven apartment buildings on 139<sup>th</sup> Street went on rent strikes; one of the buildings had not had gas since October 2019, while the other was in deplorable condition, with water leaks, mold, collapsed ceilings, and rodent and roach infestations.<sup>36</sup>

Yajaira Saavedra, whose family owns La Morada restaurant in Mott Haven, which has provided up to 1,200 free meals a day to vulnerable community members during the Covid-19 pandemic, described what the neighborhood has been going through: “It wasn’t just Covid, but also folks didn’t hear about their families when they went into hospitals, family members went missing in the hospital, folks were getting wrongfully evicted, landlords turning off gas and water, and employers just firing people without any prior warning with the excuse of Covid-19.”<sup>37</sup>

Mott Haven is also one of the most heavily policed neighborhoods in the city and has been plagued with disproportionately high rates of police misconduct for years. According to data from the Civilian Complaint Review Board (CCRB), the 40<sup>th</sup> precinct in Mott Haven has received the third highest number of civilian complaints about police misconduct, and the most complaints for police use of physical force, out of the NYPD’s 77 precincts since 2015.<sup>38</sup>

A 2016 *New York Times* investigation found a “paradox of policing” in the 40<sup>th</sup> precinct: the precinct has aggressively over-policed the community for years for low-level crimes, yet it is the most under-resourced to investigate violent crimes, with the majority going

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<sup>35</sup> Lucy Block, “How is Affordable Housing Threatened in Your Neighborhood? 2020,” Association for Neighborhood and Housing Development report, <https://anhd.org/report/how-affordable-housing-threatened-your-neighborhood-2020> (accessed August 18, 2020).

<sup>36</sup> Steve Goodstein, “139<sup>th</sup> St. residents protest landlord, management,” *Bronx Times*, May 22, 2017, <https://www.bxtimes.com/139th-st-residents-protest-landlord-management/>; Parker E. Quinlan, “Amid Outbreak, Tenants Protest to Demand Rent Cancellations,” *Mott Haven Herald*, <http://www.motthavenherald.com/2020/04/05/amid-outbreak-tenants-protest-to-demand-rent-cancelations/> (August 18, 2020). “How the Stoop and the Sidewalk Helped New Yorkers Stay Sane,” *New York Times*, June 14, 2020, <https://www.nytimes.com/2020/06/14/nyregion/coronavirus-nyc-stoop-neighbors.html> (accessed August 18, 2020).

<sup>37</sup> Human Rights Watch telephone interview with Yajaira Saavedra, whose family owns La Morada restaurant, Mott Haven, August 20, 2020.

<sup>38</sup> Eric Umansky, “We’re Publishing Thousands of Police Discipline Records That New York Kept Secret For Decades,” *ProPublica*, July 26, 2020, <https://www.propublica.org/article/nypd-civilian-complaint-review-board-editors-note> (accessed August 18, 2020).

unsolved.<sup>39</sup> The 40<sup>th</sup> precinct was among the most active precincts in the practice of stop and frisk, which was deemed unconstitutional in 2013 as a form of racial profiling.<sup>40</sup> Christopher McCormack, the commanding officer of the 40<sup>th</sup> precinct from 2011 to 2014, was recorded pressuring officers to conduct more street stops of “male blacks 14 to 20, 21.”<sup>41</sup> In an ongoing lawsuit filed in 2015, four NYPD officers of color alleged that the precinct was a racially hostile work environment in which McCormack imposed an arrest quota system to target Black and Hispanic men and punished officers who did not comply.<sup>42</sup> Yet at the same time, the 40<sup>th</sup> precinct had the highest murder rate but the fewest detectives per violent crime. Officers told the *New York Times* that they felt pressure to downgrade crimes and even overlook crime reports from those unlikely to complain, like immigrants.<sup>43</sup>

Mott Haven residents are also disproportionately surveilled by US Immigrations and Customs Enforcement (ICE).<sup>44</sup> ICE raids are not uncommon in the neighborhood; in March 2020, residents protested after officers armed with rifles came through their residential building at 6 a.m., for the third time that year.<sup>45</sup>

It is in this chasm of government neglect and police harassment that the community has lost trust in law enforcement. Residents expressed frustration by the lack of resources in their neighborhood yet watch funding funnel into enforcement that results in their harassment but neglects their genuine concerns.

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<sup>39</sup> Benjamin Mueller and Al Baker, “Rift Between Officers and Residents as Killings Persist in South Bronx,” *New York Times*, December 31, 2016, <https://www.nytimes.com/2016/12/31/nyregion/bronx-murder-40th-precinct-police-residents.htm> (accessed August 18, 2020).

<sup>40</sup> Ibid. “Near the height of the stop-and-frisk strategy, in 2012, the 40th Precinct had the third-most stops in the city, the second-most stops in which officers used force and the most frisks.” See also, *Floyd, et al. v. the City of New York, et al.* 08 cv 01034. U.S. District Court Southern District of New York. August 12, 2013.

<sup>41</sup> Joseph Goldstein, “Recording Points to Race Factor in Stops by New York Police,” *New York Times*, March 21, 2013, <https://www.nytimes.com/2013/03/22/nyregion/bronx-officers-recording-suggests-race-is-factor-in-stops.html> (accessed August 18, 2020).

<sup>42</sup> Stephen Rex Brown and Graham Rayman, “Ex-cop details NYPD ‘collar quotas’ – arrest black and Hispanic men, ‘no cuffs on soft targets’ of Jews, Asians, whites: court docs,” *New York Daily News*, December 5, 2019, <https://www.nydailynews.com/new-york/nyc-crime/ny-nypd-quotas-lawsuit-20191205-osdwj4kounf5xkvurkj3wshqny-story.html> (accessed August 18, 2020).

<sup>43</sup> Al Baker, “19 Police Officers in the Bronx Are Charged With Downgrading Crimes,” *New York Times*, July 17, 2015, <https://www.nytimes.com/2015/07/18/nyregion/19-police-officers-in-the-bronx-are-charged-with-downgrading-crimes.html> (accessed August 18, 2020).

<sup>44</sup> Shamira Ibrahim, “The NYPD’s Long History of Targeting Black Immigrants,” Documented New York, July 1, 2020, <https://documentedny.com/2020/07/01/the-nypds-long-history-of-targeting-black-immigrants/> (accessed August 27, 2020).

<sup>45</sup> “Demonstrators say ICE raids in Mott Haven have made families fearful,” *News 12 The Bronx*, March 5, 2020, <http://bronx.news12.com/story/41860704/demonstrators-say-ice-raids-in-mott-haven-have-made-undocumented-families-fearful> (accessed August 27, 2020).

In this context, community leaders and activists have repeatedly called on government officials to invest more in education, health care, housing, and social services to address problems like homelessness and drug addiction – and to give residents in Mott Haven and the broader South Bronx the same opportunities to live, learn, and thrive as those residing in other neighborhoods across the city.<sup>46</sup>

For many in Mott Haven, Mayor de Blasio’s plan in 2019 to spend \$8.7 billion on building four new jails across the city – including one in Mott Haven – epitomizes how the city is getting its priorities wrong. In a May 2020 letter to de Blasio and Corey Johnson, the speaker of the City Council of New York City, 11 elected officials from the Bronx urged them to stop the plans for building the Mott Haven jail and to instead reallocate the funding to invest in the needs of vulnerable community members, including the response to Covid-19 and funds for programs that provide critical educational and economic opportunities, such as the previously cancelled Summer Youth Employment Program (SYEP) and the planned expansion of early education for 3-year-olds.<sup>47</sup>

The officials wrote:

Not only are Mott Haven residents suffering some of the highest rates of COVID-19 infection and death, they are also much more likely to feel severe economic pain in the coming recession. Residents are much less likely to have the savings to get through unemployment or the skills to quickly find new work in a downturn.

It is exactly these types of desperate conditions that can lead to increases in poverty and public safety issues. The funds previously allocated for jail construction in the Bronx (and elsewhere) should instead be [used] in a much smarter, safer, and fairer manner to ameliorate the social conditions that have been caused by neighborhood abandonment, poverty and decades of public disinvestment in our neighborhoods.<sup>48</sup>

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<sup>46</sup> Lori Freshwater, “Residents Sound Off About Gentrification,” *Mott Haven Herald*, March 10, 2017, <http://www.motthavenherald.com/2017/03/10/residents-sound-off-about-gentrification/> (accessed September 10, 2020); Ed García Conde, “CityViews: Residents, Not Investors, Revitalized Mott Haven. Displacement, Not Progress, is What They Fear,” *City Limits*, February 21, 2018, <https://citylimits.org/2018/02/21/cityviews-the-activists-and-residents-of-mott-haven-arent-against-its-revitalization-in-fact-they-caused-it/> (accessed September 10, 2020).

<sup>47</sup> Joint Letter to Mayor Bill de Blasio and Speaker Corey Johnson, May 26, 2020, <https://www.norwoodnews.org/wp-content/uploads/2020/05/COVIDMottHavenJailLetterfinal-1.pdf> (accessed August 18, 2020).

<sup>48</sup> Ibid.

Many of these same concerns brought people out on the streets to protest in Mott Haven on June 4.

## II. Protest in Mott Haven

### The FTP<sub>4</sub> Protest

The protest in Mott Haven on June 4, 2020 was a community-based and community-driven response to the killing of George Floyd. The protest was called FTP<sub>4</sub>, and it was organized by a collective of New York City-based grassroots activist groups under the “FTP Formation” header. The formation consists of groups primarily led by Black and brown women such as Take Back the Bronx, which has resisted gentrification in the South Bronx for the past decade; Bronxites for NYPD Accountability, which has confronted police precinct commanders about police abuse in the Bronx for the past six years; and Decolonize This Place, which addresses racism in the art world and its connections to global militarization.<sup>49</sup>

The groups are dedicated to police and prison abolition, they provide important services to vulnerable community members, and they fight for other causes like racial justice, decolonization, and anti-capitalism.<sup>50</sup> For these groups, FTP has had different meanings in different contexts, including “Fuck the Police,” “Feed the People,” and “For the People.”

One of the protest organizers, Shannon Jones, explained the principles of the group:

We're predicated on the liberation of African people. We don't speak anything less than that. We're a reparations organization. We believe in the full restoration of land to the indigenous people that was stolen by European terrorists. Reformism and incremental politics defer our liberation.<sup>51</sup>

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<sup>49</sup> Human Rights Watch email correspondence with Shannon Jones, one of the protest organizers, September 17, 2020; Lauren Aratani, “‘We will not let up’: activists protest NYPD subway crackdown,” *Guardian*, December 12, 2019, <https://www.theguardian.com/us-news/2019/dec/12/new-york-subways-police-nypd-protests> (accessed August 26, 2020); Decolonize This Place’s Facebook page, <https://www.facebook.com/decolonizethisplace/photos/a.191670791253899/972382029849434/> (accessed August 26, 2020); “The Art of Escalation: Becoming Ungovernable on a Day of City-Wide Transit Action,” *Hyperallergic*, January 31, 2020, <https://hyperallergic.com/540324/j31/> (accessed August 26, 2020).

<sup>50</sup> Homepage for Decolonize This Space, <https://decolonizethispace.org/movement-space> (accessed August 26, 2020); Take Back the Bronx’s Facebook page, <https://www.facebook.com/takebackthebx/> (accessed August 26, 2020); Why Accountability’s Facebook page, <https://www.facebook.com/WhyAccountability> (accessed August 26, 2020).

<sup>51</sup> Jake Offenhartz, “Meet The ‘Outside Agitator’ Whose Bronx March Was Violently Cracked Down On By The NYPD,” *Gothamist*, June 10, 2020, <https://gothamist.com/news/meet-outside-agitator-whose-bronx-march-was-violently-crushed-nypd> (accessed August 18, 2020).

Yajaira Saavedra, whose family owns La Morada restaurant, a safe haven for activists in Mott Haven, told Human Rights Watch that the protest on June 4 showed “the solidarity in our community because we are just fed up with police brutality and injustice and lack of accountability.”<sup>52</sup>

The coalition had organized previous “FTP” protests about the over-policing of New York City subways, viewing the hiring of more officers and a crackdown on fare evasion as “an attack on the poor in this city.”<sup>53</sup> During the first two demonstrations in November 2019 and the third in January 2020, protesters sometimes engaged in mass fare evasion, which garnered significant attention and may have triggered increased scrutiny of the groups’ activities by the NYPD.<sup>54</sup>

Some of the flyers for the FTP<sub>4</sub> protest depicted a police car burning and a cartoon of a man jumping over a policeman. The organizers called on people to defend themselves in the face of police violence, and one of the protesters held a sign that read “Ante up! Punch that cop! NYPD out of MTA!” But there was also a Code of Conduct posted for the protest that denounced “goofy irresponsible adventurism” and asked protesters to “follow the lead of the people from the hood.”<sup>55</sup> A flyer about the protest specifically instructed demonstrators not to bring weapons.<sup>56</sup> As described below, Human Rights Watch is not aware of any credible threats or acts of violence by the protest organizers or protesters during the FTP<sub>4</sub> protest in Mott Haven. To the contrary, the FTP<sub>4</sub> protest was entirely peaceful until the police carried out their violent assault.

Nevertheless, the NYPD presented the protest as a “credible threat” and warned local businesses beforehand.<sup>57</sup> A message posted on Facebook on the morning of the protest by the NYPD 40<sup>th</sup> Precinct Community Council said: “After speaking with NYPD and other organizers in the area we have learned that the group which plans to be at the HUB [a small plaza] this evening has a reputation for planting bricks, etc. throughout the day to be

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<sup>52</sup> Human Rights Watch telephone interview with Yajaira Saavedra, August 20, 2020.

<sup>53</sup> Lauren Aratani, “‘We will not let up’: activists protest NYPD subway crackdown,” *Guardian*, December 12, 2019, <https://www.theguardian.com/us-news/2019/dec/12/new-york-subways-police-nypd-protests> (accessed August 26, 2020).

<sup>54</sup> Ben Chapman and Tyler Blint-Welsh, “Protests of Policing in New York City Subway Lead to Arrests,” *Wall Street Journal*, January 31, 2020, <https://www.wsj.com/articles/protests-of-policing-in-new-york-city-subway-lead-to-arrests-11580521991> (accessed August 19, 2020); Lauren Aratani, “‘How do you spell racist NYPD’: New Yorkers protest growing police action on subways,” *Guardian*, January 31, 2020, <https://www.theguardian.com/us-news/2020/feb/01/new-york-city-subway-policing-protests-grand-central> (accessed August 19, 2020).

<sup>55</sup> Take Back the Bronx’s Instagram page, [https://www.instagram.com/p/CA\\_829iDe3d/](https://www.instagram.com/p/CA_829iDe3d/) (accessed August 28, 2020).

<sup>56</sup> Decolonize This Place’s Facebook page, <https://www.facebook.com/decolonizethisplace/photos/pcb.969863740101263/969863650101272> (accessed August 27, 2020).

<sup>57</sup> *Ibid.*

used later in the evening."<sup>58</sup> Human Rights Watch did not find any evidence that the protest organizers had planted bricks, rocks, or other potential projectiles during this protest, or in previous FTP protests. This appears to have been a deliberate effort at fearmongering on the part of the NYPD to help justify their planned crackdown on a group that is known to be critical of the police and capable of mobilizing public pressure.

Those who participated in the FTP<sub>4</sub> protest came from Mott Haven, the broader Bronx community, and other boroughs across the city.<sup>59</sup> Some protesters told Human Rights Watch that they had participated in other Black Lives Matter protests in Manhattan and Brooklyn over the previous week, but they were particularly drawn to the FTP<sub>4</sub> protest because it was taking place in the heart of a community that was so directly affected by systemic racism and police abuse.<sup>60</sup>

## Rally and March through the Neighborhood

From about 6 p.m., protesters began gathering at what is known as “The Hub,” a small plaza on 149<sup>th</sup> Street and 3<sup>rd</sup> Avenue in the South Bronx. Organizers handed out face masks, water bottles, and food – both to protesters and to passersby.<sup>61</sup> Legal observers, wearing badges and clearly identifiable uniforms, and medics, in scrubs with the red cross insignia, also met at the start of the march to discuss their strategies and divide into pairs.

From the start, protesters and observers described an unusually heavy police presence, including officers in riot gear, and many with their badges covered up.<sup>62</sup> Already by 6:22 p.m., Human Rights Watch identified in the video footage 52 police officers, five police cars, four prisoner vans, and two unmarked cars, with more police officers and cars arriving.<sup>63</sup> Groups of officers also gathered outside the surrounding subway exits and put up barricades, blocking some of the exits.<sup>64</sup> Several protesters and observers noticed at

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<sup>58</sup> 40<sup>th</sup> Precinct Community Council Facebook page, <https://www.facebook.com/40thprecinctcouncil/photos/a.10151919073469647/10158195052484647/?type=3&theater> (accessed August 26, 2020).

<sup>59</sup> Joe Hirsch, “Protestors’ Clash with Law Enforcement in Mott Haven Fuels Calls for Dismantling NYPD,” *Mott Haven Herald*, June 19, 2020, <http://www.motthavenherald.com/2020/06/19/protesters-clash-with-law-enforcement-in-mott-haven-fuels-calls-for-dismantling-nypd/> (accessed August 26, 2020).

<sup>60</sup> Human Rights Watch telephone interview with Abdourahmane Diallo, protester, August 29, 2020; Human Rights Watch interview with protester, name withheld, August 13, 2020.

<sup>61</sup> *Ibid.*

<sup>62</sup> City of New York Police Department, Patrol Guide, “Force Guidelines,” June 1, 2016, [https://www1.nyc.gov/assets/ccrb/downloads/pdf/investigations\\_pdf/pg221-01-force-guidelines.pdf](https://www1.nyc.gov/assets/ccrb/downloads/pdf/investigations_pdf/pg221-01-force-guidelines.pdf) (accessed August 24, 2020).

<sup>63</sup> Abdourahmane Diallo’s Facebook page, <https://www.facebook.com/abdourahmane.diallo.79/videos/2906704476074281> (accessed August 27, 2020).

<sup>64</sup> *Ibid.*; Confidential statements from NLG Legal Observers on file with Human Rights Watch.

least five police officers on the roof of a nearby building, overlooking The Hub.<sup>65</sup> Legal observers reported seeing police officers conduct several apparently random stops and searches of cars and pedestrians in the area surrounding the Hub before the protest began.<sup>66</sup>

At about 7:10 p.m., two of the organizers gave speeches on megaphones. They emphasized “the continuum of insurrection” since Europeans first came to the country and pointed out the police officers on the roofs of buildings and that the police were surrounding the outskirts of the protest, saying it represented the types of police repression that the Mott Haven community typically sees.<sup>67</sup> At this point, one observer counted two dozen police officers on the east side of 3<sup>rd</sup> Avenue between 148<sup>th</sup> and 149<sup>th</sup> Streets, and about 40 uniformed police officers on Morris Avenue between 149<sup>th</sup> and 150<sup>th</sup> Streets.<sup>68</sup> Another observer counted 14 vans parked nearby and at least 10 unmarked vehicles on side streets, occupied by uniformed police officers.<sup>69</sup>

Just after 7:20 p.m., the group of around 300 protesters started their march through the neighborhood. Several protesters described it as more of an “educational tour,” as they walked through the Patterson Houses, one of the five public housing complexes in Mott Haven, and organizers pointed out an apartment building that had recently been raided by the NYPD and US Immigration and Customs Enforcement (ICE) and another where someone had recently been shot. They described being well received by community members, with a general positive atmosphere to the march – despite the seriousness of the issues – and many in the neighborhood joining in as they passed by.<sup>70</sup>

“People were lined up on the streets, not just clapping but they were out with music or they would come out of their public housing building to join or applaud,” one participant

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<sup>65</sup> Human Rights Watch telephone interview with Mike Pappas, doctor serving as a medic at the Mott Haven protest July 31, 2020; Human Rights Watch telephone interview with Conrad Blackburn, attorney at Bronx Defenders, August 21, 2020; Human Rights Watch telephone interview with Emily Wint, *New Yorker* journalist at the protest, July 23, 2020; Human Rights Watch interview telephone with Zara Marie, protester, July 20, 2020; Human Rights Watch telephone interview with Nora Thomas, protester, July 9, 2020.

<sup>66</sup> Confidential statements from NLG Legal Observers on file with Human Rights Watch.

<sup>67</sup> Video footage on file with Human Rights Watch; Human Rights Watch telephone interview with Mike Pappas, July 31, 2020; Human Rights Watch interview with protester, name withheld, June 13, 2020.

<sup>68</sup> Confidential NLG Legal Observer statement on file with Human Rights Watch.

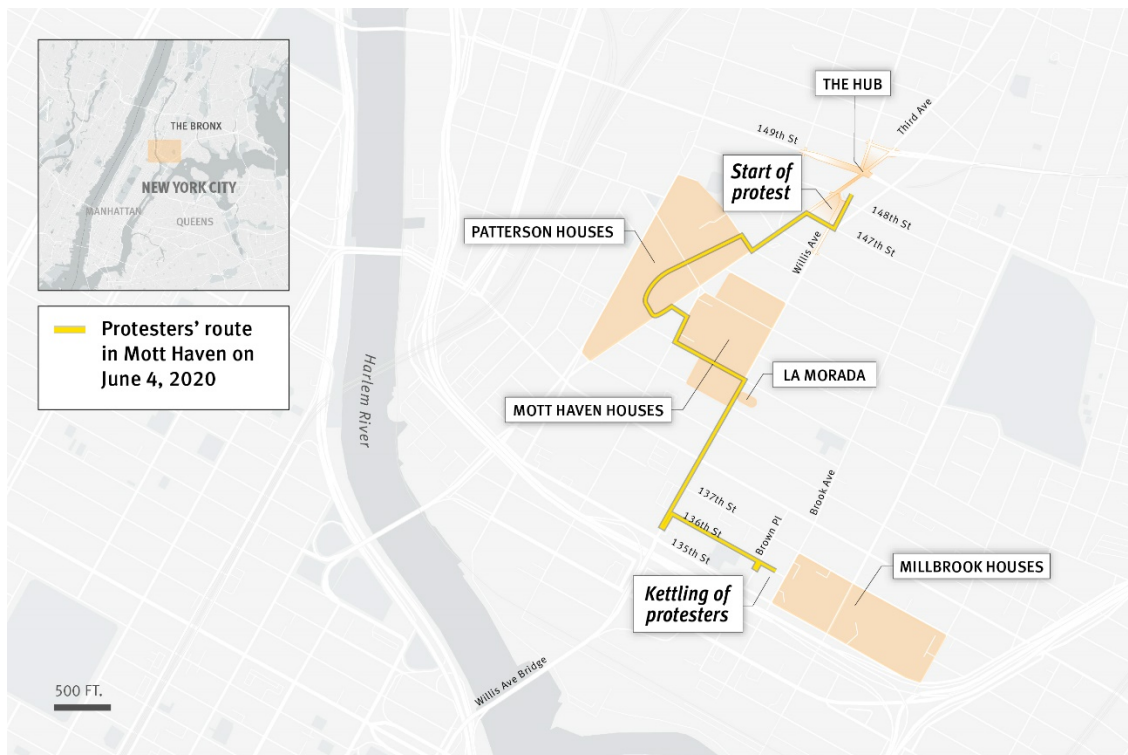
<sup>69</sup> Ibid.

<sup>70</sup> Human Rights Watch telephone interview with Mike Pappas, July 31, 2020; Human Rights Watch telephone interview with Andom Ghebregiorgis, protester, June 8, 2020; Human Rights Watch telephone interview with Chantel Johnson, protester and Mott Haven resident, August 6, 2020.



said. “If people couldn’t leave their building, they would open their windows and bang pots and pans and chant from the building.”<sup>71</sup>

The march made a special stop at La Morada restaurant, where organizers thanked the restaurant owners for their support to the community and their work defending the rights of undocumented residents.<sup>72</sup> The restaurant owner also took the megaphone to encourage the protesters.<sup>73</sup>



<sup>71</sup> Human Rights Watch telephone interview with doctor Mike Pappas, July 31, 2020; Human Rights Watch telephone interview

with Emily Wint, *New Yorker* journalist at the protest, July 23, 2020.

<sup>72</sup> Jake Offenhartz, Nick Pinto, and Gwynne Hogan, “NYPD’s Ambush of Peaceful Bronx Protesters Was ‘Executed Nearly Flawlessly,’ City Leaders Agree,” *Gothamist*, June 5, 2020, <https://gothamist.com/news/nypds-ambush-of-peaceful-bronx-protesters-was-executed-nearly-flawlessly-city-leaders-agree> (accessed August 26, 2020).

<sup>73</sup> Video footage on file with Human Rights Watch.

For about the first 30 minutes, some police trailed behind the protesters, but they did not interfere or try to stop the march.<sup>74</sup> Then, at about 7:50 p.m., when the protesters approached 135<sup>th</sup> Street on Willis Avenue, they encountered a row of at least 50 police officers with bikes blocking them from continuing along Willis Avenue towards the Willis Avenue Bridge. To avoid a confrontation with the police, the group turned east on 136<sup>th</sup> Street to Brown Place. Another group of police officers and police cars blocked the southern intersection at Brown Place, preventing the protesters from turning right on Brown Place towards 135<sup>th</sup> Street. The group instead continued east on 136<sup>th</sup> Street. As they approached Brook Avenue at about 7:56 p.m., a wall of bicycle police in riot gear blocked them from continuing.<sup>75</sup> Quickly, another group of police closed in on the protesters from behind, and some protesters attempted to split off or run away. Within moments, the group was trapped, or kettled, on a narrow street with no means of escape.<sup>76</sup>

## Police Crackdown

### *“Kettling”*

Video footage and accounts from protesters and observers reveal a frenzied and chaotic scene as the protesters realized that they were trapped.<sup>77</sup> A line of bicycle police in riot gear used their bikes to push them from the front, while police on the other side pushed them from behind. Parked cars blocked escape routes on the sides. Protesters were jammed together, some of them even lifted off their feet, and others holding themselves up so they didn’t fall on protesters beneath them. “We’re being packed and packed like sardines,” one of the protesters later said.<sup>78</sup> Many of the protesters started chanting, “Let Us Go” or “We are peaceful, what the fuck are you?”, and one person cried out, “You’re gonna kill us, I can’t breathe.”<sup>79</sup>

Video footage that Human Rights Watch verified showed that police kettled the protesters by 7:56 p.m. – before the 8 p.m. curfew.<sup>80</sup>

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<sup>74</sup> Joe Hirsch, “Protestors’ Clash with Law Enforcement in Mott Haven Fuels Calls for Dismantling NYPD,” *Mott Haven Herald*, June 19, 2020, <http://www.motthavenherald.com/2020/06/19/protesters-clash-with-law-enforcement-in-mott-haven-fuels-calls-for-dismantling-nypd/> (accessed August 26, 2020).

<sup>75</sup> Video on file with Human Rights Watch.

<sup>76</sup> Ibid.; Joe Hirsch, “Protestors’ Clash with Law Enforcement in Mott Haven Fuels Calls for Dismantling NYPD,” *Mott Haven Herald*, June 19, 2020, <http://www.motthavenherald.com/2020/06/19/protesters-clash-with-law-enforcement-in-mott-haven-fuelscalls-for-dismantling-nypd/> (accessed August 26, 2020).

<sup>77</sup> Video on file with Human Rights Watch.

<sup>78</sup> Human Rights Watch telephone interview with protester Andom Ghebregiorgis, June 8, 2020.

<sup>79</sup> Ibid.

<sup>80</sup> Video on file with Human Rights Watch.

A protester described how he tried to protect himself:

For us in the middle, we were just being crushed. People were actually falling on the ground being crushed. One said they thought they had broken their leg. Someone fell on their chest and said they had a hard time breathing. I was pushed down but did a good job securing myself on the ground. I had put my arm on someone's leg. There was a girl right beneath me and if I went all the way down, I would have crushed her. I was bracing myself and resisting the pressure from all directions. That went on for at least a few minutes.<sup>81</sup>

Protesters interviewed by Human Rights Watch raised concerns about increased exposure to Covid-19, as they were cramped together, and it was impossible to maintain distance.<sup>82</sup>

"There was obviously a plan to get [us] in a closed space, before the curfew," another protester said. "Then after the curfew, there was this intentional and deliberate operation to arrest people as soon as possible."<sup>83</sup>

At 8:06 p.m. – after the protesters were trapped in the kettle and the arrests had already begun – the police played a recording that said: "Beginning at 8 p.m., a citywide curfew will be in effect. Other than essential workers, no person shall occupy... city streets. Thank you for your cooperation."<sup>84</sup> Many protesters told Human Rights Watch they could not hear or understand the recording, but those who did wondered how they could go home when they were trapped by the police.<sup>85</sup>

### *Beatings, Pepper Spray, and Mass Arrests*

Just before the protesters were trapped, one of the organizers, Shannon Jones, and a group of about 20 other organizers and protesters made it onto Brook Avenue. When the bicycle police formed a line to block the marchers, these people were separated from the larger

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<sup>81</sup> Human Rights Watch telephone interview with protester, name withheld, August 13, 2020.

<sup>82</sup> Ibid.; Human Rights Watch telephone interview with Andom Ghebregiorgis, protester, June 8, 2020; Human Rights Watch telephone interview with Mike Pappas, July 31, 2020; Confidential statements from NLG Legal Observers on file with Human Rights Watch.

<sup>83</sup> Human Rights Watch telephone interview with Andom Ghebregiorgis, June 8, 2020.

<sup>84</sup> Video on file with Human Rights Watch.

<sup>85</sup> Only four interviewees claimed that they heard, or think they heard, a dispersal order or a curfew announcement. Confidential statement from NLG Legal observer on file with Human Rights Watch.



New York City police officers crack down on peaceful protesters in Mott Haven in the South Bronx on June 4, 2020. © 2020 Andom Ghebreghiorgis

group.<sup>86</sup> A group of police officers, including four white-shirted uniformed supervisors, stood near Jones and her group, including the Chief of Department Terence Monahan, the NYPD's highest-ranking uniformed officer.<sup>87</sup>

Seeing what was happening to the protesters in the kettle, Jones called out on her megaphone, "Can y'all hear me on the other side?"<sup>88</sup> Monahan then approached Jones and tried to grab her megaphone, but other protesters stood in front of Jones to protect her. Video footage shows Monahan saying something to the other officers standing nearby, who all then form a line. Thirty seconds later, they violently assaulted the group, throwing most of them to the ground

and arresting them. A supervising officer in a white shirt aggressively grabbed Jones, put his hands around her neck, and then put her in a shoulder lock before throwing her to the ground.<sup>89</sup> When another activist saw this, he said he went over to ask if she was okay, and then a police officer turned around and punched him in the face, knocking his tooth out.<sup>90</sup>

Meanwhile, at about 8:10 p.m., the police officers kettling the large crowd without provocation moved in on the protesters, beat them with their batons, fired pepper spray into protesters' faces, and shoved people to the ground.<sup>91</sup>

<sup>86</sup> Jake Offenhartz, "Meet The 'Outside Agitator' Whose Bronx March Was Violently Cracked Down On By The NYPD," *Gothamist*, June 10, 2020, <https://gothamist.com/news/meet-outside-agitator-whose-bronx-march-was-violently-crushed-nypd> (accessed August 18, 2020).

<sup>87</sup> Ibid.

<sup>88</sup> Ray Mendez's Facebook page, <https://www.facebook.com/1442538699/posts/10223644813455369/?d=n> (accessed August 26, 2020); Chesimard's Twitter page, <https://twitter.com/StarkVonDoom/status/1268749034170339328> (accessed August 26, 2020).

<sup>89</sup> Jake Offenhartz, "Meet The 'Outside Agitator' Whose Bronx March Was Violently Cracked Down On By The NYPD," *Gothamist*, June 10, 2020, <https://gothamist.com/news/meet-outside-agitator-whose-bronx-march-was-violently-crushed-nypd> (accessed August 18, 2020).

<sup>90</sup> Sydney Pereira, Jake Offenhartz, and Gwynne Hogan, "'My Tooth Was Out, My Head Was Ringing': Nine Protesters Detail Their Violent Encounters With the NYPD," *Gothamist*, June 16, 2020, <https://gothamist.com/news/nypd-protest-violence-victims-in-their-own-words> (accessed August 26, 2020). See also "NYPD aggressively apprehend rally organizer Shannon Jones," June 10, 2020, YouTube, video clip, <https://www.youtube.com/watch?v=eXceGpFwVEE> (accessed August 27, 2020).

<sup>91</sup> Jake Offenhartz, Nick Pinto, and Gwynne Hogan, "NYPD's Ambush of Peaceful Bronx Protesters Was 'Executed Nearly Flawlessly,' City Leaders Agree," *Gothamist*, June 5, 2020, <https://gothamist.com/news/nypds-ambush-of-peaceful-bronx>



The New York Police Department's highest-ranking uniformed officer, Terence Monahan, approaches Shannon Jones, one of the leaders of the Mott Haven protest on June 4, 2020, just before police assault and arrest Jones and over 250 other peaceful protesters. © 2020 Ray Mendez

"Then it's kind of all a blur," one of the protesters, Brian Abelson, recalled. "This big cop punched me in the face. Some other cop then grabbed my hand and twisted my finger and broke it. Then another cop sprayed me in the face with mace. Then they dragged me on the ground and beat me with batons. Somewhere in the process of being cuffed, I had a knee on my neck." Abelson said that as he waited to be processed and put in a van, he had a bloody nose, his eyes were burning and he couldn't see, he had bruises all over, and eventually he started spitting blood.<sup>92</sup>

A young teacher from the neighborhood who came to the protest on her own, Chantel Johnson, described her experience:

There was a Black man next to me, and we started to hold each other, and as I'm holding him, I can feel the impact of the batons hitting his back. And that really traumatized me. ... Here I am holding a Black man as he was being beat on his back and every time he got hit, I felt the hit and now I'm feeling his tears on my face. I just kept telling him, "I got you, I'm not gonna let you go," and he just rested his chin on my forehead and held me tight.<sup>93</sup>

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protesters-was-executed-nearly-flawlessly-city-leaders-agree (accessed August 26, 2020); video on file with Human Rights Watch.

<sup>92</sup> Human Rights Watch telephone interview with Brian Abelson, protester, August 7, 2020.

<sup>93</sup> Human Rights Watch interview with Chantel Johnson, protester and Mott Haven resident, August 6, 2020.

Another protester said it “felt like a warzone.” The police were “terrorizing people,” he added. “You see people screaming, ‘I can’t breathe, I can’t breathe.’ You see people crying. It was just chaos.”<sup>94</sup>

Protesters also struggled with the effects of the pepper spray and pepper balls. “A strong smell plagued the crowd, causing most protestors and police in the street and on the sidewalk to start coughing,” one observer recalled. “Immediately following the stench, a few protestors retreated up the sidewalk from the bike line, covering their eyes as other protestors proceeded to aid them in flushing their eyes.”<sup>95</sup>

As the beating continued, the police officers began making arrests. They forced people to sit on the ground and bound their wrists behind their backs with zip ties, often so tight that people said that their hands went numb or they felt they were losing circulation.<sup>96</sup>

A helicopter hovered overhead, and one legal observer – who hadn’t yet been detained – said that for a time it was so loud, he was unable to hear and record the names of those being arrested.<sup>97</sup>

Amid the chaos, one woman had a seizure and another woman started going into labor.<sup>98</sup> A legal observer said it took at least several minutes and repeated pleas from other protesters before the pregnant woman was allowed to seek medical attention:

People around me started yelling. ...I turned and saw a pregnant woman lying on the ground and clutching her belly in pain/discomfort. I joined the protestors in yelling for medical assistance. For several minutes, we yelled and the officers trapping us did nothing. White shirts passed by for several

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<sup>94</sup> Human Rights Watch telephone interview with Abdourahmane Diallo, protester, August 29, 2020.

<sup>95</sup> Confidential statement from NLG Legal Observer on file with Human Rights Watch.

<sup>96</sup> Human Rights Watch telephone interview with Gabriel Solano, protester, July 21, 2020; Human Rights Watch telephone interview with Zara Marie, protester, July 20, 2020; Confidential statements from NLG Legal Observers on file with Human Rights Watch. See also Peter Senzamici, “Plastic Handcuff Used by NYPD During Anti-Brutality Protests Strikes a Nerve,” *The City*, July 22, 2020, <https://www.thecity.nyc/2020/7/22/21335083/plastic-handcuff-use-by-nypd-during-anti-brutality-protests-strikes-a-nerve> (accessed August 26, 2020).

<sup>97</sup> Confidential statement from NLG Legal Observer on file with Human Rights Watch.

<sup>98</sup> Sydney Pereira, Jake Offenhartz, and Gwynne Hogan, “‘My Tooth Was Out, My Head Was Ringing’: Nine Protesters Detail Their Violent Encounters With the NYPD,” *Gothamist*, June 16, 2020, <https://gothamist.com/news/nypd-protest-violence-victims-in-their-own-words> (accessed August 26, 2020); “‘It felt like warfare’: Protesters detail clashes with police during NY attorney general hearing,” *Pix11*, June 17, 2020, <https://www.pix11.com/news/local-news/protesters-to-detail-clashes-with-police-during-ny-attorney-general-hearing> (accessed August 26, 2020); Yoav Gonen, Carson Kessler, and Peter Senzamici, “In Their Own Words: Dozens of Protesters Detail Violent Encounters with NYPD,” *The City*, June 10, 2020, <https://www.thecity.nyc/2020/6/10/21287326/protesters-detail-violent-encounters-with-nypd> (accessed August 26, 2020).

minutes and did nothing. Eventually, one of the white shirts maneuvered his way into the crowd. He and a few other officers then took her out of the kettle to seek medical attention.<sup>99</sup>

Another protester described what he saw while sitting in the crowd of cuffed detainees:

It was bad because lots of people were yelling “medic.” There was a woman with blood gushing from her head, five or six rows ahead of me. She was taken away and I don’t know what happened to her. There was a young woman to my right – she was lying down next to me and was unresponsive. The cops were trying to figure out if she was breathing but they weren’t moving with any urgency. The crowd started yelling. Her friend is getting hysterical. Then the cops realized she’s not moving. ...Then she starts convulsing like she’s in a seizure. Finally, they call over the EMT [emergency medical technicians] and three cops and the EMT lift her up and take her away. I don’t know what happened after. Her friend was still there and crying hysterically.<sup>100</sup>

Eventually ambulances arrived, and a medic who was zip-tied at the time said that he saw at least three people taken out on stretchers: “[They were] handcuffed to the stretchers, with head bandages, visibly bleeding from the bandage.”<sup>101</sup>

### *Targeting Legal Observers, Medics, Essential Workers, and Bystanders*

While the majority of those beaten and arrested were protesters, the police also targeted legal observers, medics, and bystanders, including essential workers who happened to be passing by.

#### **Legal Observers**

The National Lawyers Guild (NLG) New York City Chapter and the newly formed Black Legal Observer Collective (BLOC) deployed around 20 volunteer legal observers (LOs) to the Mott Haven protest. The legal observers are lawyers and law students trained to observe and

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<sup>99</sup> Confidential statement from NLG Legal Observers on file with Human Rights Watch.

<sup>100</sup> Human Rights Watch telephone interview with Andom Ghebreghiorgis, June 8, 2020.

<sup>101</sup> Human Rights Watch telephone Interview with Mike Pappas, July 31, 2020.

document police conduct, including potential human rights and civil rights violations.<sup>102</sup> They also record the names of those arrested during protests, help coordinate jail support, and ensure that those arrested have legal representation. The role of legal observers during protests is clearly laid out in the NYPD Patrol Guide.<sup>103</sup>

The National Lawyers Guild has had a legal observation program since 1968. They attend protests wearing bright green hats labeled “NLG Legal Observer” and identification badges to increase their visibility to protesters, bystanders, and law enforcement.<sup>104</sup> Members of BLOC wore red berets, name tags with their attorney numbers, and signs reading “Legal Observers” on their backs.<sup>105</sup>

The NYPD claimed to Human Rights Watch that legal observers were not essential workers, but the observers had documentation from the Mayor’s office stating that they were exempt from the curfew.<sup>106</sup>

On June 1, the chief of staff for New York State Assembly member Dan Quart had emailed the chief of staff of the Mayor’s Office of State Legislative Affairs, Jenny Sobelman, asking whether those “who are doing jail, legal and medical support for arrested protestors” are exempt from the curfew. Sobelman replied on June 1, saying “Yes. They are exempt from the curfew.” Separately, Persephone Tan from the Mayor’s Office of City Legislative Affairs confirmed in an email sent to the communications director of New York City council member Carlos Menchaca on June 1 that she had “checked in with the Mayor’s counsel who confirmed: yes, those lawyers are essential and can show up in person if they can’t do their work remotely. Protecting one’s liberty is about as essential as it gets. If non-lawyers are volunteering to provide essential support to the lawyers, they are essential as well.”

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<sup>102</sup> “Police Targeting NLG Legal Observers at Black Lives Matter Protests,” National Lawyers Guild press release, June 7, 2020, <https://www.nlg.org/police-targeting-nlg-legal-observers-at-black-lives-matter-protests/> (accessed August 26, 2020); “Our Work,” National Lawyers Guild website, <https://www.nlg.org/our-work/> (accessed August 26, 2020).

<sup>103</sup> See NYPD Patrol Guide (PG) §§203-29 and PG §§213-11. April 3, 2019, [https://www1.nyc.gov/assets/nypd/downloads/pdf/public\\_information/public-pguide1.pdf](https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/public-pguide1.pdf) (accessed August 30, 2020).

<sup>104</sup> Ibid.; “Police Targeting NLG Legal Observers at Black Lives Matter Protests,” National Lawyers Guild press release, June 7, 2020, <https://www.nlg.org/police-targeting-nlg-legal-observers-at-black-lives-matter-protests/> (accessed August 26, 2020).

<sup>105</sup> Emma Whitford, “At NYC Protests, A New Collective of Black Legal Observers,” Law360, July 19, 2020, <https://www.law360.com/articles/1287917/at-nyc-protests-a-new-collective-of-black-legal-observers> (accessed August 26, 2020).

<sup>106</sup> Letter from the National Lawyers Guild to the New York State Attorney General’s Office on file with Human Rights Watch. See also letter from the NYPD in Annex II of the report.



Eric Cecil Henry, general counsel for city legislative affairs at the Mayor's office, was copied on that email.<sup>107</sup>

These communications were shared with the National Lawyers Guild New York City Chapter, which used them to prepare an "Attestation of Essential Services" that legal observers carried with them during the Mott Haven protest, in addition to a copy of the email from Sobelman.<sup>108</sup>

Soon after the kettling began on 136<sup>th</sup> Street, the legal observers were among the first to be targeted, as the police prevented them from documenting police abuses and writing down the names of those who had been arrested.<sup>109</sup> Many of the legal observers had been standing on the side of the protest, on the north side of the street, and they were clearly identifiable with their notebooks, badges, and green or red hats. Just after 8 p.m., police detained at least 13 of them.<sup>110</sup> In many cases, these arrests were violent, leading to bruising, lacerations, and sprains.

One legal observer described their violent arrest:

One officer punched me in the face, and then I was slammed to the concrete. ...Several officers sat on top of me as one officer placed my hands in zip tie cuffs. Another officer stomped on each one of my calves as I laid on the sidewalk motionless while being cuffed. Moments later, the officers quickly got off of me while one yelled, "Get the fuck up right now!" Realizing I had no idea how to get up from the position I was in, I responded, "how?" I was then quickly jerked up by arms. Now up on my feet, one officer jerked me by my arm into the street. This officer continued to pull me by my arm down the hill, at the base of which was a large group of at least a hundred protestors kneeling. As we approached the group, the officer said, "get on your knees and don't move," as he pushed me toward the ground. Part of me panicked as I was pushed into this circle of at least a hundred people kneeling tightly together, all of which had had their facemasks removed.<sup>111</sup>

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<sup>107</sup> Letter from the National Lawyers Guild to the New York State Attorney General's Office on file with Human Rights Watch. Email correspondence on file with Human Rights Watch.

<sup>108</sup> National Lawyers Guild New York City Chapter "Attestation of Essential Services" on file with Human Rights Watch.

<sup>109</sup> Letter from the New York City chapter of the NLG to Commissioner Dermot Shea of the New York City Police Department, on file with Human Rights Watch.

<sup>110</sup> Confidential NLG Legal Observer statements on file with Human Rights Watch.

<sup>111</sup> Ibid.



New York City police detain a legal observer during a peaceful protest in Mott Haven on June 4, 2020. © 2020 C.S. Muncy

The police knew that they were detaining legal observers. In addition to their clearly identifiable hats and badges, observers immediately told the police officers that they were legal observers, had a legal right to monitor the protest and were exempt from curfew, and many tried to show the officers their attestations from the mayor's office. This did not deter the officers. Instead, the arrests appear to have been deliberate. Video footage from 8:07 p.m. shows an officer with "NYPD LEGAL" written on his uniform directing other uniformed officers to arrest the legal observers.<sup>112</sup> "Legal observers *can* be arrested," he says. "They're good to go!"<sup>113</sup> Footage also shows one legal observer attempting to show officers the attestation and multiple officers responding by knocking it out of her hand, twisting her arm behind her back, and slamming her to the ground.<sup>114</sup> One legal observer, after

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<sup>112</sup> Jack Offenhartz, "'Round Up the Green Hats': NYPD Accused of Deliberately Targeting Legal Observers in Brutal Bronx Mass Arrest," *Gothamist*, June 8, 2020, <https://gothamist.com/news/round-green-hats-nypd-accused-deliberately-targeting-legal-observers-brutal-bronx-mass-arrest> (accessed August 26, 2020).

<sup>113</sup> *Ibid.*

<sup>114</sup> "NYPD officers arresting a legal observer in Mott Haven on Thursday, June 4, 2020," June 8, 2020, YouTube, video clip, [https://www.youtube.com/watch?time\\_continue=12&v=OLn2iy-ia24&feature=emb\\_logo](https://www.youtube.com/watch?time_continue=12&v=OLn2iy-ia24&feature=emb_logo) (accessed August 26, 2020).

being restrained in zip ties, said she overheard a white-shirted officer ask another officer, “Is that all the green hats?”<sup>115</sup>

Six legal observers said that police seized, searched, and destroyed their notebooks.<sup>116</sup> One described identifying himself to law enforcement as a legal observer, at which point a police officer “responded by grabbing at my notebook, and in the process tore out a number of pages. These included all of my notes from that day so far, including officers’ names and the license plate numbers of unmarked vehicles.”<sup>117</sup>

The legal observers were eventually removed from the larger group of protesters, lined up, and asked to face away from the other detainees. Police asked them each for their identification cards, took photos of their IDs, and then said they would be released on condition that they immediately leave the protest area. The legal observers did not agree to this condition, but they were all eventually released within about 30 minutes of their apprehension.<sup>118</sup>

On June 5, in response to the abusive treatment of legal observers in Mott Haven, seven elected officials from New York signed a letter “underscoring the critical need for jail, legal, and medical support” during protests and stating that the officials “are in agreement with the Mayor’s office that these individuals are essential workers who are not subject to the curfew.” The letter was given to legal observers to show police officers in case of future harassment during protests.<sup>119</sup>

## Medics

At least six healthcare workers from across New York joined the protest as medics, dressed in scrubs with the red cross insignia. As with the legal observers, the medics were among the first people whom the police targeted for arrest. One medic, Mike Pappas, described what happened just after 8 p.m.:

The lieutenants started pointing people out like, “Get ‘em,” and the police just came towards us. And there were almost more officers than protesters

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<sup>115</sup> Confidential statement from NLG Legal Observer on file with Human Rights Watch.

<sup>116</sup> Confidential statement from NLG Legal Observer on file with Human Rights Watch

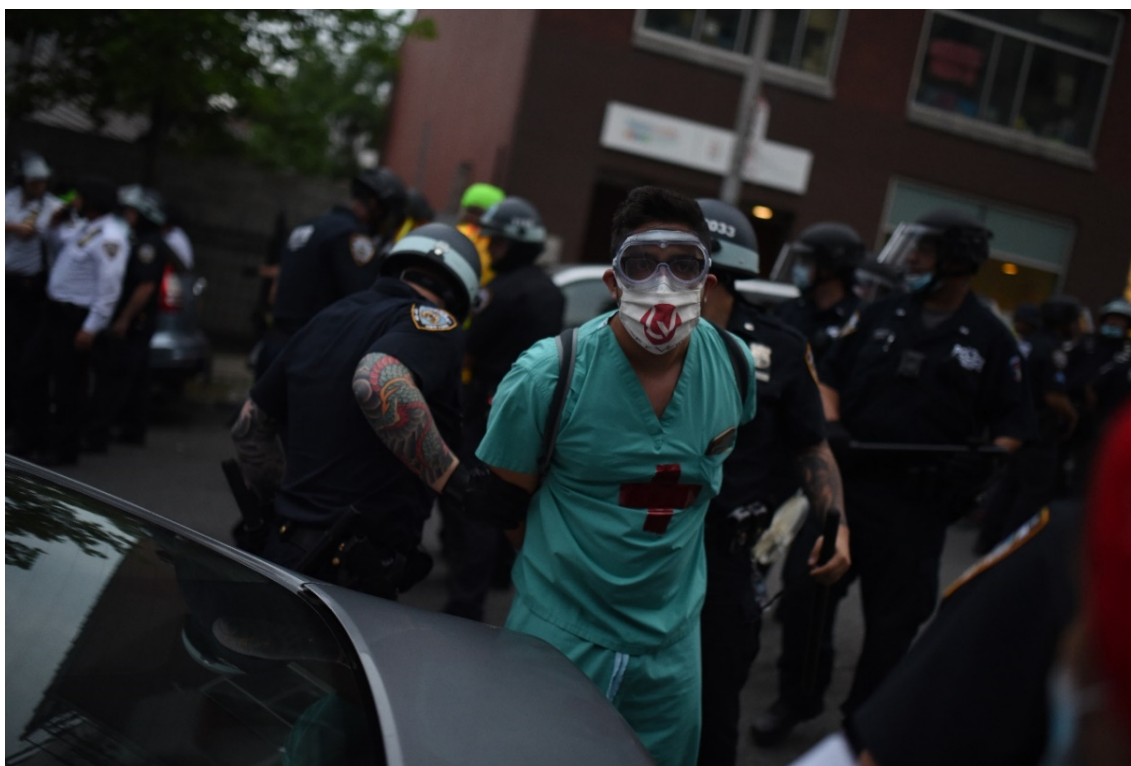
<sup>117</sup> Confidential statement from NLG Legal Observer on file with Human Rights Watch.

<sup>118</sup> Letter from the New York City chapter of the NLG to NYPD Commissioner Dermot Shea, June 7, 2020, on file with Human Rights Watch; Confidential statements from NLG Legal Observers on file with Human Rights Watch.

<sup>119</sup> Letter from election officials to legal observers on file with Human Rights Watch. A photo of the letter can also be seen on Eli Northrup’s Twitter page, <https://twitter.com/elinorthrup/status/1269759844170510344?s=21> (accessed September 24, 2020).

so you could have one officer per protester. As they came towards us, I told them, “Hey, we’re healthcare workers acting as medics, you guys trapped us in here, and if you let us go, we’ll go on the outside of this and continue acting as medics.” The officer who grabbed me said, “Yeah man, no problem, just come with me.” So, I thought maybe he would let me go on the side. But the way he was holding my arm, I felt was the way you hold someone when they’re being arrested. And then he says, “You’re under arrest.”<sup>120</sup>

Pappas was eventually taken to a precinct jail with other protesters, and he said that at least five other medics from the protest were also arrested.



Police arrest a street medic during a peaceful protest in Mott Haven, New York City, on June 4, 2020. © 2020 C.S. Muncy

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<sup>120</sup> Human Rights Watch telephone interview with Mike Pappas, July 31, 2020.

For those medics who weren't detained, officers actively obstructed them from helping the injured.<sup>121</sup> Jillian Primiano, a registered nurse, was let go soon after being arrested. But she said that officers then prevented her from entering the crowd to treat anyone, despite there not being enough fire department medics on the scene to help all the injured people.<sup>122</sup>

One observer also saw a white-shirted officer telling people in a car with clearly identified medics that they needed to drive away.<sup>123</sup>

Physicians for Human Rights published a case study based on the experiences of four volunteer street medics who attended the Mott Haven protest, which describes how police blocked the medics from providing care to injured protesters and how three of them were detained in conditions "antithetical to public health."<sup>124</sup>

### **Essential Workers and Bystanders**

Police also targeted other essential workers, who were exempt from the curfew, and bystanders. Devaughnta Williams was returning to a family member's home from his job as a janitor, before beginning his late-night shift at a Family Dollar store, when he encountered the protesters, just as they were being kettled by the police.<sup>125</sup> When police arrested him, Williams explained to the officers that he was an essential worker, even presenting paperwork as evidence. Despite this, the police sent Williams to a precinct in Queens where he did not receive food, water, or access to a phone for 18 hours.<sup>126</sup> He was later transferred to a detention center in Manhattan and held there for another six days, allegedly because his parole officer had heard about his arrest.<sup>127</sup>

Deon Williams, a Fresh Direct worker, was reportedly on the sidewalk near the protest when police began targeting bystanders on the sidewalk. Richards described being pepper

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<sup>121</sup> "Healthcare Workers: From 'Heroes' to Targets of Police Repression," *Left Voice*, June 8, 2020,

<https://www.leftvoice.org/healthcare-workers-from-heroes-to-targets-of-police-repression> (accessed August 26, 2020).

<sup>122</sup> Left Voice Instagram account, [https://www.instagram.com/tv/CBGvGEmJt7y/?utm\\_source=ig\\_embed](https://www.instagram.com/tv/CBGvGEmJt7y/?utm_source=ig_embed) (accessed August 26, 2020); Human Rights Watch telephone interview with Mike Pappas, July 31, 2020.

<sup>123</sup> NLG Legal Observer confidential statements on file with Human Rights Watch.

<sup>124</sup> Physicians for Human Rights, "A Targeted Attack on the Bronx": Police Violence and Arrests of Health Workers at a New York City Protest, September 2020, <https://phr.org/our-work/resources/a-targeted-attack-on-the-bronx/> (accessed September 25, 2020).

<sup>125</sup> Jake Offenhartz, "Caught In De Blasio's Curfew, Essential Worker Spends Week In Jail After NYPD Mass Arrests Bronx Protestors," *Gothamist*, June 11, 2020, <https://gothamist.com/news/caught-de-blasios-curfew-essential-worker-spends-week-jail-after-nypd-crushes-bronx-protest> (accessed August 19, 2020).

<sup>126</sup> Ibid.

<sup>127</sup> "LAS Secures Release of Essential Worker Caught In NYPD's Bronx Protest," Legal Aid Society press release, June 11, 2020, <https://www.legalaidnyc.org/news/las-secures-release-essential-worker-caught-nypd-bronx-protest-crackdown/> (accessed August 19, 2020).

sprayed, slammed to the ground, and held on the cement by an officer's knee as he was being arrested.<sup>128</sup> He then fainted and later found himself at Lincoln Hospital, where he said the doctors told him the EKG reading indicated he had had a heart attack.<sup>129</sup>

Pappas, the medic, said that soon after he was arrested, he saw a man leaving a bodega on a bike. "Five to six officers jumped on him and ripped him off the bike," he said. "They had like an officer per limb throw him to ground and arrest him."<sup>130</sup> Pappas also said that he saw a group of three or four people on a stoop of a building on the side of the kettle filming the scene. "Cops tried to run on the stoop and arrest them when they were filming. The group went into their entranceway and inside the door, and I watched the police try to pick the lock and go in."<sup>131</sup>

Pappas said that later when he was in detention, two other people were detained in the cell with him who said they were arrested nearby but had not been part of the protest. Pappas recalled how one of the men said he was stopped by police officers while he was walking home from a bodega:

Cops said, "Hey come here for a second," and he said, "No, I'm going home." They chased him down and tackled him, put their knee on his neck. He told us it was similar to George Floyd; he was saying, "I can't breathe." ... He said they hit him in the face with their police helmet, and he had a red knot under his eye, so I don't disbelieve that.

Pappas said that the other man told him how the police came after him just after he left a store near the site of the kettling.<sup>132</sup>

"Even some of the public housing people who saw the commotion were violently engaged with by the police because they saw what was going on," another protester said. "People were breaking curfew watching us be arrested for breaking curfew that we only broke because we were blocked in."<sup>133</sup>

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<sup>128</sup> Sydney Pereira, Jake Offenhartz, and Gwynne Hogan, "'My Tooth Was Out, My Head Was Ringing': Nine Protesters Detail Their Violent Encounters With The NYPD," *Gothamist*, June 16, 2020, <https://gothamist.com/news/nypd-protest-violence-victims-in-their-own-words> (accessed August 19, 2020).

<sup>129</sup> Ibid.

<sup>130</sup> Human Rights Watch telephone Interview with Mike Pappas, July 31, 2020 and Human Rights Watch interview with Conrad Blackburn, attorney at Bronx Defenders, August 21, 2020.

<sup>131</sup> Human Rights Watch telephone Interview with Mike Pappas, July 31, 2020.

<sup>132</sup> Ibid.

<sup>133</sup> Human Rights Watch telephone interview with Andom Ghebregiorgis, June 8, 2020.

### *Detention in Abusive Conditions*

In total, the police arrested and took to jail 263 people – more than at any other protest in New York City since the killing of George Floyd.<sup>134</sup>

The zip-tied protesters were forced to sit in the street for up to an hour as they waited for police buses and vans to collect them. While some were eventually taken to the 40<sup>th</sup> and 41<sup>st</sup> precincts in the Bronx, most were taken to mass arrest processing centers in Queens and Brooklyn, making it harder for lawyers and families to locate them and for protesters to make it home once they were released. Once they entered the precincts, protesters were searched and put in holding cells. Most were then transferred into a second and sometimes a third cell, and some were fingerprinted, before they were eventually released.

According to the Bronx District Attorney's office, 183 people arrested during the Mott Haven protest were given summonses, 71 were given desk appearance tickets (DATs), and 9 were live arrests that the District Attorney declined to prosecute.<sup>135</sup> Most were charged with Class B misdemeanors for unlawful assembly and curfew violations, punishable by up to 90 days in jail or one year of probation, and up to \$500 in fines, and were given court dates in early October.<sup>136</sup>

Protester accounts indicate that the whole process took hours, from waiting for the police vans, being transported, waiting to be processed, and being held in cramped cells. The police offered them no food and little or no water. Many said their face masks had fallen off during arrest, and the police did not provide new masks, hand sanitizer, or other protections from Covid-19. Most police officers at the jails reportedly were not wearing masks. One of the detainees said he later found out that someone in the cell with him tested positive for the virus.<sup>137</sup>

Some of those arrested during the protest were released late on the night of June 4 or in the early hours of June 5; others were held into the afternoon the next day. Legal observers and volunteers providing “jail support” struggled to track down where protesters were being held, and some of them who were waiting outside the precincts to provide support to

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<sup>134</sup> Email correspondence between Human Rights Watch and the Bronx District Attorney's office on August 26, 2020.

<sup>135</sup> Email to Human Rights Watch from Bronx District Attorney's Office, August 26, 2020. Desk appearance tickets (DATs) are given to individuals who face criminal charges but are released into society until a court date, after being processed, instead of having to remain in jail until being presented before a judge.

<sup>136</sup> New York Consolidated Laws, Penal Law, section 70-15, <https://www.nysenate.gov/legislation/laws/PEN/70.15> (accessed August 26, 2020).

<sup>137</sup> Human Rights Watch telephone interview with Mike Pappas, July 31, 2020.

protesters upon their release were harassed by police officers and told to leave – despite statements from the mayor’s office saying that they were exempt from the curfew.<sup>138</sup>

Andom Ghebregiorgis, a protester, said that the police cuffed him, took his ID, and had him sit on the ground with the crowd of others who were arrested for at least an hour. He said that at about 9:15 or 9:30 p.m., the police took his phone and put him in a cramped, hot police van with about 24 people.<sup>139</sup> They were then driven to Queens Central Booking and forced to stay in the van until nearly midnight, supposedly waiting for their arresting officers to arrive. Ghebregiorgis said that his face mask had slipped to his chin when he was arrested, and he couldn’t put it back on because his hands were cuffed. Many others in the van were in the same situation.<sup>140</sup>

Between 11:30 p.m. and midnight, they were finally let off the van – only to enter “the longest line of all time,” he said. “They said they were arresting everyone for breaking curfew.... But they obviously didn’t have the capacity to deal with everyone at once. There were 200 people on a line that’s not moving.” As they waited, it started pouring rain at around 1 a.m. A small woman near him in line was completely soaked, “essentially freezing,” and the police “wouldn’t do anything” as she was shivering and crying for around 45 minutes. “It was inhuman,” Ghebregiorgis said.<sup>141</sup>

At about 3 a.m., they were getting close to the front of the line when the police informed them that they would be moved to Brooklyn. “Those of us in line completely flipped out,” he said. “We’ve been waiting 3½ or 4 hours on this line, and we’re drenched. We worry about what will happen in Brooklyn. Many of us think it’s intentional – go from Bronx to Queens to Brooklyn – is this deliberate to make it hard for legal people and our families to find us?”<sup>142</sup>

When the group got to Brooklyn Central Booking, they were processed and then Ghebregiorgis was held in three different cells until he was finally released at 2:56 p.m. on June 5. During the 19-hour ordeal, he was not given anything to eat nor allowed to make a phone call nor contact a lawyer. They fingerprinted him four times for no apparent

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<sup>138</sup> Statement from Jillian Primiano, OAG Hearing on Interactions between NYPD and the General Public, Attorney General’s Office, <https://ag.ny.gov/sites/default/files/2020-06-oag-nypd-writtentestimony.pdf> (accessed August 31, 2020); Human Rights Watch telephone interview with Mike Pappas, July 31, 2020; Left Voice Instagram account, [https://www.instagram.com/tv/CBGvGEmJt7y/?utm\\_source=ig\\_embed](https://www.instagram.com/tv/CBGvGEmJt7y/?utm_source=ig_embed) (accessed August 26, 2020).

<sup>139</sup> Human Rights Watch telephone interview with Andom Ghebregiorgis, June 8, 2020.

<sup>140</sup> Human Rights Watch telephone interview with Andom Ghebregiorgis, June 8, 2020.

<sup>141</sup> Ibid.

<sup>142</sup> Ibid.



reason. When he was finally released, he was given a desk appearance ticket, saying that he had been charged with unlawful assembly and was due to appear in court on October 2.<sup>143</sup>

Human Rights Watch interviewed and reviewed testimony from 28 other protesters who had similar experiences. Six were taken to precincts in Bronx; the others were taken to Queens Central Booking.

Two volunteers providing jail support and a protester who was arrested told Human Rights Watch that it appeared that white protesters were getting released earlier than Black protesters.<sup>144</sup> One observer said that it seemed white protesters were more likely to get summonses, while Black protesters were more likely to receive desk appearance tickets, which allow for greater police scrutiny through searches and fingerprinting.<sup>145</sup> Human Rights Watch requested from the Bronx District Attorney an official breakdown on these issues by race, but was told this information was not available.

As described above, Devaughnta Williams, the essential worker who was arrested during the protest, spent one week in jail. His first 18 hours in detention were similar to what Ghebreghiorgis experienced. But then, he said, someone informed his parole officer that he was there being processed for a desk appearance ticket for unlawful assembly. “So, parole came to get me and basically threw me in the Manhattan detention center,” he said. After significant mobilization and pressure from his wife, lawyer, and activists, he was eventually released at around 11:15 p.m. on June 11.<sup>146</sup>

Williams’ case highlights the more pernicious and potentially long-term effects when police arrest people wrongfully. If an individual is on probation or parole, any new charge could send them back to prison, as was the case with Williams.<sup>147</sup> Even pending criminal

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<sup>143</sup> Ibid.

<sup>144</sup> Human Rights Watch interview with Conrad Blackburn, attorney at Bronx Defenders, August 21, 2020; Human Rights Watch telephone interview with Chantel Johnson, August 6, 2020; and Human Rights Watch interview with Gabriel Solano, July 21, 2020.

<sup>145</sup> Human Rights Watch interview with Conrad Blackburn, August 21, 2020.

<sup>146</sup> Devaughnta Williams’ statement to the New York Attorney General’s office, <https://ag.ny.gov/sites/default/files/2020-06-oag-nypd-writtentestimony.pdf> (accessed September 10, 2020). See also private email correspondence with Devaughnta Williams’ lawyer; Jake Offenhartz, “Caught in De Blasio’s Curfew, Essential Worker Spends Week In Jail After NYPD Mass Arrests Bronx Protesters,” *Gothamist*, June 11, 2020, <https://gothamist.com/news/caught-de-blasios-curfew-essential-worker-spends-week-jail-after-nypd-crushes-bronx-protest> (accessed September 10, 2020).

<sup>147</sup> *Revoked: How Probation and Parole Feed Mass Incarceration in the United States*, (New York: Human Rights Watch, 2020), [https://www.hrw.org/sites/default/files/media\\_2020/07/us\\_supervision0720\\_web\\_1.pdf](https://www.hrw.org/sites/default/files/media_2020/07/us_supervision0720_web_1.pdf) (accessed September 1, 2020).

charges can have detrimental consequences on people's immigration status, their ability to remain in public housing, or ability to get a job.<sup>148</sup>

"The fight is still on for parole reform, police reform and wrongful imprisonments," Williams said in his statement to the New York Attorney General's office. "There are a lot of brothers and sisters still locked up for things that they didn't do...If I didn't have these people behind me, I might still be a faceless name swimming through the system!"<sup>149</sup>

The arbitrary arrests of the protesters violated their right to peaceful assembly, not only before the curfew went into effect but potentially after the curfew, which could be considered an overly broad and vague restriction.<sup>150</sup> Even if the police determined that the protest was unlawful, they should have first given protesters the opportunity to disperse, with clear instructions and open pathways. If the police then faced any resistance, they should have issued summonses on the street instead of bringing people to jail.<sup>151</sup> The protesters who were detained faced heightened risks of Covid-19 infection in the cramped detention conditions.

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<sup>148</sup> New York State Bar Association, "Identifying, Challenging and Overcoming Impacts of Criminal Convictions in 2018: Tips and Tools for Civil Legal Services Practitioners Incorporating Recent Changes in Law and Policy," October 3, 2018, <https://nysba.org/NYSBA/Pro%20Bono%20Services/Events%20and%20Training/2018%20Partnership%20Conference/civil%20impacts%20of%20criminal%20convictions.pdf> (accessed August 27, 2020).

<sup>149</sup> Devaughnta Williams' statement to the New York Attorney General's office, <https://ag.ny.gov/sites/default/files/2020-06-oag-nypd-writtentestimony.pdf> (accessed September 10, 2020). See also private email correspondence with Devaughnta Williams' lawyer; Jake Offenhartz, "Caught in De Blasio's Curfew, Essential Worker Spends Week In Jail After NYPD Mass Arrests Bronx Protesters," *Gothamist*, June 11, 2020, <https://gothamist.com/news/caught-de-blasios-curfew-essential-worker-spends-week-jail-after-nypd-crushes-bronx-protest> (accessed September 10, 2020).

<sup>150</sup> "Civil Rights Organizations Threaten to Sue if De Blasio Extends Curfew," NYCLU press release, June 5, 2020, <https://www.nyclu.org/en/press-releases/civil-rights-organizations-threaten-sue-if-de-blasio-extends-curfew> (accessed September 1, 2020); "As More Protesters Are Arrested, NYCLU and Others Threaten to Sue Over Curfew," Bedford and Bowery, June 6, 2020, <https://bedfordandbowery.com/2020/06/as-more-protesters-are-arrested-nyclu-and-others-threaten-to-sue-over-curfew/> (accessed September 1, 2020).

<sup>151</sup> Changes to New York's Criminal Legal Procedure 150.20(1)(a), adopted in January 2020, bar individuals from being arrested, including being handcuffed or brought in for processing, for charges below a Class E felony, except in some limited circumstances, such as sex-related offenses, domestic violence, or if the person has outstanding warrants or is unwilling or unable to make their verifiable identity and contact information known, after being given a reasonable opportunity to do so. Instead, individuals must be given appearance tickets on the street. Martha Rayner and Alex Garber, "How an Unheralded Change to Criminal Procedure Law 150.20 Will Overhaul Arrest Procedures in New York," *New York Law Journal* via Law.com, February 21, 2020, <https://www.law.com/newyorklawjournal/2020/02/21/how-an-unheralded-change-to-criminal-procedure-law-150-20-will-overhaul-arrest-procedures-in-new-york/> (accessed September 24, 2020). Previously, officers had discretion to arrest individuals for misdemeanors and violations and bring them to a precinct to be searched, fingerprinted, and put through a background check. Rosa Goldensohn and Reuven Blau, "Shift in State Law Could Spare Many Charged With Misdemeanors From Lockup," *The City*, April 15, 2019, <https://www.thecity.nyc/justice/2019/4/15/21211155/shift-in-state-law-could-spare-many-charged-with-misdemeanors-from-lockup> (accessed August 31, 2020).

These unnecessary detentions might be spurred by the incentives the authorities have for carrying out even unlawful arrests: a custodial arrest provides officers additional opportunities to search people, question them, and then charge them for unrelated offenses.<sup>152</sup> A legal observer providing jail support said that ICE agents were spotted at the 40<sup>th</sup> precinct, raising concerns that they may have been using protest arrests to investigate people's immigration status.<sup>153</sup>

The NYPD also interfered with individuals providing jail support, who were exempt from the curfew. Jail support volunteers help to ensure that everyone who was arrested is accounted for, track them through the system, provide food and water to those being released, connect them with attorneys, and help them get home. A lawyer at the 40<sup>th</sup> Precinct said officers told jail support volunteers they had to stay 200 feet away from the precinct and would not let him enter the precinct to see or speak to one of his clients.<sup>154</sup> At the 41<sup>st</sup> Precinct, officers were giving jail support workers a hard time, apparently until State Senator Gustavo Rivera made some calls and showed up on the scene.<sup>155</sup> One white-shirted officer arrested a jail support worker on video, after claiming not to know what jail support was and refusing to look at a letter stating that they were essential workers.<sup>156</sup> Officers at Queens Central Booking told volunteers that they were not allowed to do jail support in view of where people were being released and made them move down Queens Boulevard where those who were being released in the rain and darkness could not find them.<sup>157</sup> Lawyers and volunteers also said precincts were not answering phones or responding to requests from attorneys.<sup>158</sup>

### *Injuries Sustained by Protesters and Observers*

Human Rights Watch documented 61 cases of protesters, legal observers, and bystanders who sustained injuries during the police crackdown in Mott Haven, based on Human Rights Watch interviews with protesters, accounts provided by other protesters to the Attorney General's office and media outlets, and accounts in notices of claim. The injuries included a broken nose, a broken finger, lacerations, black eyes, a lost tooth, and prolonged difficulties breathing and seeing.

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<sup>152</sup> Human Rights Watch telephone interview with Jennvine Wong, lead attorney of the Cop Accountability Project at the Legal Aid Society, July 23, 2020.

<sup>153</sup> Human Rights Watch telephone interview with Conrad Blackburn, August 21, 2020.

<sup>154</sup> Ibid.

<sup>155</sup> Human Rights Watch telephone interview with Gustavo Rivera, New York State Senator, August 27, 2020.

<sup>156</sup> Human Rights Watch telephone interview with Mike Pappas, July 31, 2020; Left Voice's Instagram page, [https://www.instagram.com/tv/CBGvGEmJt7y/?utm\\_source=ig\\_embed](https://www.instagram.com/tv/CBGvGEmJt7y/?utm_source=ig_embed) (accessed September 1, 2020).

<sup>157</sup> Human Rights Watch telephone interview with Emily Wint, *New Yorker* journalist at the protest, July 23, 2020.

<sup>158</sup> Statements from the Bronx Defenders and the Legal Aid Society to the New York State Attorney General.

Most of those arrested said that officers secured zip ties so tightly around their wrists that they suffered severe pain, numbness from reduced circulation to their hands, and potential nerve damage. Many asked police officers to loosen the zip ties, but the officers apparently refused to do so.

One protester said he couldn't see properly in one eye for weeks after the protest, and an eye doctor diagnosed him with a scratched cornea. He said the doctor told him this could have been caused either from when a police officer punched him in the face or when another officer took his face mask off and sprayed him directly in the face with pepper spray.<sup>159</sup> Another protester had to attend physical therapy to recover from a shoulder injury they sustained when a police officer smashed them to the ground during the arrest.<sup>160</sup> Another reportedly has a scar on his forehead from being hit in the face and struck with batons by police after he was already cuffed.<sup>161</sup>

One of the organizers described what she called the “zip tie torture”: She said the ties were so tight that it took four police officers and three kinds of pliers to cut them off her wrists, after her hands had already turned blue. Because of the nerve damage, she's now wearing braces and has had to see a neurologist to make sure the damage isn't permanent.<sup>162</sup>

Separately, based on analysis of the video footage, Human Right Watch counted 21 incidents of police beating participants with batons, in many cases while police were beating people from atop a parked car; 11 incidents of police officers delivering direct blows (punches or kicks) to protesters; 19 incidents of police slamming, tackling, or dragging protesters; 14 incidents of police firing pepper spray directly at participants' faces; four incidents of police throwing bikes against protesters; and two incidents where police restrained participants with a knee to the face or upper neck.

While police eventually allowed at least three individuals who were taken away on stretchers to receive medical attention, most of those injured did not receive any immediate treatment. Medics deployed to the protest were either arrested or obstructed

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<sup>159</sup> Human Rights Watch interview with Brian Abelson, protester, August 7, 2020.

<sup>160</sup> Human Rights Watch interview with a protester, name withheld, July 21, 2020.

<sup>161</sup> Chelsia Rose Marcus and Rocco Parascandola, “82 protestors file to sue city alleging police brutality at George Floyd events,” *New York Daily News*, <https://www.nydailynews.com/new-york/nyc-crime/ny-police-brutality-allegations-mott-haven-george-floyd-nypd-20200823-z5zdxz5vhpffx66uuowforiu-story.html> (accessed August 24, 2020).

<sup>162</sup> See Shellyne Rodriguez's interview in Sydney Pereira, Jake Offenhartz, and Gwynne Hogan, “‘My Tooth Was Out, My Head Was Ringing’: Nine Protesters Detail Their Violent Encounters With The NYPD,” *Gothamist*, June 16, 2020, <https://gothamist.com/news/nypd-protest-violence-victims-in-their-own-words> (accessed August 19, 2020).

from assisting the injured protesters. This meant that many injured protesters spent hours in detention with untreated wounds and their hands cuffed behind their backs. They were not even given water to wash off the blood. A legal observer described the injuries they saw while doing jail support, as people arrested during the protest were released: “Several...had open gashes on their heads, most had bruises and/or cuts, and one had hands that were purple due to the tightness of the cuffs.” <sup>163</sup>

A protester who managed to avoid arrest went to different jails the next morning to provide jail support. “And that was another shocker,” she said. “You saw people coming out with head injuries, shirts ripped, bruised arms. It was just a lot. I drove someone to urgent care back in the Bronx. His head was hurt, and he had a big lump on his forehead.” <sup>164</sup>

Public health experts have also warned that the use of pepper spray during protests can accelerate the spread of Covid-19, as it forces people to cough, cry, and shout, spreading droplets that may contain Covid-19. It can also weaken people’s immune systems and ability to resist infection. <sup>165</sup> Detaining people in crowded conditions also increases their risk of exposure to Covid-19, especially when police officers were not wearing face masks and many of the protesters’ masks fell off or were pulled off during arrest. Human Rights Watch is aware of at least one person arrested during the protest who tested positive for Covid-19 a week later, although we do not know how the person contracted the virus. <sup>166</sup>

An official from the Civilian Complaint Review Board (CCRB) told Human Rights Watch that, as of September 22, they had received 69 allegations regarding police use of force at the Mott Haven protest. <sup>167</sup>

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<sup>163</sup> Confidential statement from NLG Legal Observer on file with Human Rights Watch.

<sup>164</sup> Human Rights Watch telephone interview with Chantel Johnson, August 6, 2020.

<sup>165</sup> Maanvi Singh, “Teargas and pepper spray will accelerate spread of Covid-19, doctors warn,” *Guardian*, June 6, 2020, <https://www.theguardian.com/us-news/2020/jun/06/teargas-coronavirus-george-floyd-protests> (accessed September 1, 2020); Open letter advocating for anti-racist public health response to demonstrations against systemic injustice occurring during the COVID-19 pandemic, <https://drive.google.com/file/d/1jyfn4Wd2i6bRi12ePghMHtX3ys1b7K1A/view> (accessed August 31, 2020). See also “Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities,” Center for Disease Control, July 22, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html> (accessed September 22, 2020).

<sup>166</sup> Human Rights Watch interview with Mike Pappas, July 31, 2020.

<sup>167</sup> Human Rights Watch email correspondence with Ethan Teicher, CCRB press office, August 11, 2020 and September 22, 2020. This includes one allegation of a chokehold, three allegations that handcuffs were secured too tightly, three allegations of a hit against an inanimate object, 11 allegations of officers using a nightstick as a club (including a baton), 13 allegations of use of pepper spray, 34 allegations of physical force, one allegation of use of a police shield, and three allegations of force characterized as “other.” Teicher noted that these numbers are subject to change as investigations continue.

Human Rights Watch is not aware of any police officers who sustained injuries during the protest, based on our interviews with those present at the protest and our review of 155 videos taken during the protest. The NYPD did not respond to our query about this. Several minutes after the police began to violently beat protesters, video footage shows one protester throwing a music drumstick and another protester throwing a plastic bottle.<sup>168</sup> There are no indications that the drumstick or bottle hit police officers.

## Policing the South Bronx

All the protesters and observers interviewed by Human Rights Watch said that the police response during the Mott Haven protest was unlike anything they had seen during other protests across the city. Many said they believed the police wanted to send a strong warning to the organizers – who are known to be among the most outspoken critics of police violence and racism – and to the broader South Bronx community, which has experienced police violence and the effects of systemic racism more than most.

According to Chantel Johnson, the elementary school teacher from Mott Haven who joined the protest:

It's the ghetto. The Bronx is the poorest borough. The area [of the protest] is surrounded by NYCHA [NYC Housing Authority] projects. It's easier to pick on those individuals. A lot of people don't graduate from high school or have careers. And who's going to speak up? Now if this happens on 125<sup>th</sup> and 8<sup>th</sup> avenue, you're going to have a bunch of people speaking up because there's different types of people that live in the neighborhood. But now you put this in the South Bronx, where English is many people's second language, where people can't articulate themselves or are just afraid because they've been picked on before. They're not going to speak up. They're afraid.<sup>169</sup>

Another young woman who was arrested during the Mott Haven protest, Zara Marie, said she's been going to protests since her cousin was killed by the NYPD in 2008.<sup>170</sup> She said she had never seen that level of violence by the police during the other protests. They were "ready for war," she said, and "it felt completely planned." She said this was both because

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<sup>168</sup> Andom Ghebregiorgis's Facebook page, <https://www.facebook.com/andom/videos/10102839458603994/?d=n> (accessed August 31, 2020); DVMCN's Instagram page, <https://www.instagram.com/p/CBCIJLyDUsc/?igshid=1bs63egk3w52v> (accessed August 31, 2020).

<sup>169</sup> Human Rights Watch telephone interview with Chantel Johnson, August 6, 2020.

<sup>170</sup> Human Rights Watch telephone interview with Zara Maria, protester, July 20, 2020.

the organizers of this protest were “geared towards getting justice from police violence” and because “we were in the South Bronx with a group of Black and brown people, in front of the projects – they did it right there to show the projects this is how you fall in line.”<sup>171</sup>

Abdourahmane Diallo, a West African immigrant who lives in the South Bronx and had joined a number of other protests in other parts of the city, said the police response during the Mott Haven protest was “the most brutal” he had ever seen during a march in the United States. “There’s only one explanation I can think of,” he said. “This is the Bronx – it’s full of minority groups and Spanish and African immigrants. So, the police must be thinking, ‘Why not? Who cares about these people?’”<sup>172</sup>

Another protester called it “the militarized policing of people of color,” with the police targeting “one of the poorest, most low-income communities not only in the city, but in the country” during a march where “most of the participants...were people of color.” He went on to describe how Mott Haven itself epitomizes what the protesters are fighting for:

You have this neighborhood where the city has very intentionally concentrated poverty, homeless shelters, public housing, drug treatment centers. All the various tools that the government has to impoverish and oppress and exploit the most marginalized people in society in one area. And then there’s a hyper police presence on top of that. Literally stepping out of the subway in the area – you can see what the protesters are pushing for, investing in communities and the root causes so the police aren’t needed, and people are safer and healthier.<sup>173</sup>

While the motivations for the violent police crackdown in Mott Haven on June 4 cannot be confirmed, the videos, testimonies, and other evidence clearly show that the NYPD had a premeditated plan.

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<sup>171</sup> Human Rights Watch telephone interview with Zara Marie, protester, July 20, 2020.

<sup>172</sup> Human Rights Watch telephone interview with Abdourahmane Diallo, protester, August 29, 2020.

<sup>173</sup> Human Rights Watch telephone Interview with protester, name withheld, August 13, 2020.

### **III. “A Plan, Executed Nearly Flawlessly”: Response from Police and City Officials**

The day after the protest, on June 5, Mayor Bill de Blasio held a news conference with the New York Police Department (NYPD) Commissioner Dermot Shea, in which they both applauded the police response in Mott Haven. Commissioner Shea confirmed the premeditated nature of the operation, stating, “we had a plan which was executed nearly flawlessly in the Bronx.” He described the protest as a group of “outside agitators...tearing down society” with the “intent to destroy property, to injure cops, and to cause mayhem.”<sup>174</sup>

The same day, Mayor de Blasio was confronted about the protest on the popular Brian Lehrer radio show on WNYC.<sup>175</sup> After Lehrer read an excerpt from an article and played a clip from the protest that both described an unprovoked and brutal charge by police on peaceful protesters, de Blasio stuck to the same story, claiming the NYPD had recovered gasoline canisters and weapons at the protest.<sup>176</sup> He said that the context was too “dangerous to not address,” but added that there would be “a full review of what happened there.”

Shea also tweeted images depicting items that the police allegedly seized in the Bronx on June 4. These were regular work tools, including a sledgehammer, wrench, flashlight, a pocketknife, bicycle repair kit, can of spray paint, a “frog princess” firework, and a bottle of lighter fluid.<sup>177</sup> The police have not provided any evidence that they found these items on protesters in Mott Haven or that these items were intended to be used for violent acts, saying only that they were “seized from individuals arrested in the Bronx last night.”<sup>178</sup> Legal observers reported numerous incidents of police conducting what appeared to be

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<sup>174</sup> “NYC Mayor Bill De Blasio Holds Briefing Amid George Floyd Protests, Coronavirus,” June 5, 2020, video clip, YouTube, <https://www.youtube.com/watch?v=l2BVymmBmfE> (accessed August 24, 2020). In the video, “...intent to destroy property, to injure cops and to cause mayhem...” at 40:27; “This wasn’t again about protests, this was about tearing down society” at 40:42; “...the men and women of the police department last night and the community members again came together and got these outside agitators out before they could really cause significant damage...” at 41:11; and “we had a plan which was executed nearly flawlessly in the Bronx” at 40:33.

<sup>175</sup> “Ask the Mayor,” The Brian Lehrer Show, WNYC, June 5, 2020, <https://www.wnyc.org/story/ask-mayor-060520/> (accessed August 24, 2020).

<sup>176</sup> NYC Mayor Bill De Blasio Holds Briefing Amid George Floyd Protests, Coronavirus,” June 5, 2020, video clip, YouTube, <https://www.youtube.com/watch?v=l2BVymmBmfE> (accessed August 24, 2020).

<sup>177</sup> Commissioner Shea’s Twitter page, <https://twitter.com/NYPDShea/status/1269064256554766336> (accessed August 24, 2020).

<sup>178</sup> Ibid.



random searches of vehicles and pedestrians in the neighborhood surrounding The Hub, where the protest began, in the hours before the protest.<sup>179</sup>

During public testimony under oath on June 22, as part of New York Attorney General Letitia James' investigation into the NYPD's response to protests across New York City, Commissioner Shea repeated some of the same claims:

On June 4, the Bronx played host to a blank the police rally. Social media invites encouraged injuring police officers and looting, resisting arrest and fire-bombing police vehicles. Invitees...also encouraged local gangs to converge on the events site to harm police and destroy property. The department recovered a firearm, gas canisters, lighter fluid, hammers, spray paint, fireworks and other incendiary devices from participants. During all these circumstances our officers persevered. They... made arrests, they issued summonses, and they kept moving forward and brought order back to this city. We owe all of our officers our gratitude.<sup>180</sup>

Some police officers contradicted the claims about weapons. On June 8, NYPD Deputy Commissioner John Miller told the *New York Post* that police had recovered the firearm from an alleged gang member and his girlfriend about a half mile away and over an hour before the start of the march.<sup>181</sup> The NYPD's Chief of Department Terence Monahan, who was present at the Mott Haven protest, told the *Gothamist* that the gasoline was actually found the night before the protest.<sup>182</sup>

Human Rights Watch asked the Bronx District Attorney's office about all the arrests related to the protest and cited by the NYPD. They shared the charging document for the firearm arrest, which confirmed Deputy Commissioner Miller's account about the location and time. The only other arrest was of three individuals a couple blocks away from the march, who allegedly had a bag with four wrenches and three screwdrivers, a bag with a hammer and a knife, and a sledgehammer in the car. They were charged with possession of a

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<sup>179</sup> Confidential statements from NLG Legal Observers, on file with Human Rights Watch.

<sup>180</sup> "Attorney General James Questions NYPD Commissioner Shea in Ongoing Investigation into the Interactions Between Police and the Public," New York Attorney General Letitia James page video, <https://ag.ny.gov/NYPDtestimony> (accessed August 24, 2020).

<sup>181</sup> Craig McCarthy, "NYPD Commissioner Dermot Shea ignores his own 'misinformation' warnings," *New York Post*, June 8, 2020, <https://nypost.com/2020/06/08/nypd-commissioner-ignores-his-own-misinformation-warnings/> (accessed August 24, 2020).

<sup>182</sup> Sydney Pereira, "'The Streets Were Out Of Control' NYPD Chief Defends Violent Police Tactics During George Floyd Protests," June 11, 2020, *Gothamist*, <https://gothamist.com/news/nypd-chief-monahan-george-floyd-protests-interview> (August 24, 2020).

weapon and possession of burglar's tools.<sup>183</sup> The police have not offered any evidence to suggest that they were involved in the protest. The NYPD's response to Human Rights Watch's letter referenced this arrest, stating that "a car stop of three individuals who were en route to the rally yielded hammers, fireworks, and lighter fluid."<sup>184</sup> The criminal complaint however does not allege that the police found any fireworks or lighter fluid in the car.

Commissioner Shea's claim of "outside agitators" had no basis, since the groups who organized the protest were local activists from the Bronx with whom the NYPD appears to have been very familiar. Shea even mentioned one of their previous demonstrations while denouncing them.<sup>185</sup> "I believe he knows exactly who we are," one of the protest organizers, Shannon Jones, told the *Gothamist*. "But he's not speaking to us. He's speaking to the gentrifier, to the white property owner. He's laying the foundation for our messaging and work to be suppressed."<sup>186</sup>

Displaying their connection to the community, the protest organizers held a "community give-back" on July 11 at the Mill Brook public housing complex, located across from where the police kettled and assaulted the protesters on June 4. They provided free food, PPE, and hygienic goods to the residents to thank them for the protection they provided on June 4.<sup>187</sup>

The Bronx District Attorney's office reported that 263 people were arrested during the Mott Haven protest. This does not include the legal observers who were detained, cuffed, and eventually released on site. Of the 263 arrested, 183 protesters were given summonses for curfew violations and 71 were given desk appearance tickets (DATs) for unlawful assembly. Nine people came into the complaint room as live arrests, and the district attorney declined to prosecute.<sup>188</sup>

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<sup>183</sup> Human Rights Watch email correspondence with Bronx District Attorney's Office, August 26, 2020.

<sup>184</sup> See Annex II.

<sup>185</sup> "Ask the Mayor," The Brian Lehrer Show, WNYC, June 5, 2020, <https://www.wnyc.org/story/ask-mayor-060520/> (accessed August 24, 2020).

<sup>186</sup> Jake Offerhartz, "Meet The 'Outside Agitator' Whose Bronx March Was Violently Cracked Down On By The NYPD," *Gothamist*, June 10, 2020, <https://gothamist.com/news/meet-outside-agitator-whose-bronx-march-was-violently-crushed-nypd> (accessed August 24, 2020).

<sup>187</sup> Why Accountability GoFundMe page, June 12, 2016, <https://www.gofundme.com/f/whyaccountability?fbclid=IwAR3OKrpPcXsdPTIP1u-fG3OvnS75toaE-xhXYvFPLXc1hjTvg764EvP4iEE> (accessed August 30, 2020).

<sup>188</sup> Human Rights Watch email communication with the Bronx District Attorney's office, August 26, 2020.

On September 3, Bronx District Attorney Darcel Clark filed a motion to dismiss 312 summonses “issued for Disorderly Conduct and violating curfew” during the June 4 protest in the Bronx.<sup>189</sup> The supervising judge of the Bronx Criminal Court dismissed the summonses on September 4.<sup>190</sup> The Bronx District Attorney’s office informed Human Rights Watch on September 25 that all DATs for unlawful assembly will be dismissed.<sup>191</sup>

In the NYPD’s response to Human Rights Watch’s letter, the department said that “the intent of this assembly was to engage in violence and inflict harm,” but it did not use this alleged intent to justify its use of force or mass arrests. Instead, the letter says that, “upon 8 p.m.,” the demonstration “was unlawful under the Mayor’s Executive Order establishing the curfew,” and the detention of non-essential workers “was lawful.” The department also said that “legal observers did not enjoy an exemption as essential workers,” even though the Mayor’s office had clarified before the protest that legal observers were indeed exempt.<sup>192</sup> Regarding the custodial arrests for minor offenses, the letter said that “[t]he climate during the protests made it impossible for officers to issue summonses on the street safely.”

Referring to “the early days of the George Floyd demonstrations,” the department noted that “[n]early 400 NYPD personnel were injured during the protests and subsequent riots” and that “65% of our injured personnel had to be treated at a hospital.” The NYPD did not respond to our query regarding whether any police officers were injured during the Mott Haven protest specifically.

The NYPD also did not respond to questions about its use of force on protesters and observers in Mott Haven or address why the officers trapped the protesters before the curfew and gave them no opportunity to disperse, as required by the curfew order.<sup>193</sup>

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<sup>189</sup> “Bronx DA Darcel D. Clark Announces Move to Dismiss Over 300 Summonses for Violating Curfew in June 4 Protest,” Office of the Bronx District Attorney press release, September 1, 2020, <https://www.bronxda.nyc.gov/downloads/pdf/pr/2020/24-2020%20bronx-da-announces-dismissal-protest-summonses.pdf> (accessed September 10, 2020). See also, Bronx District Attorney’s Twitter page, <https://twitter.com/BronxDAClark/status/1303423713468125184?s=20> (accessed September 22, 2020). The Bronx District Attorney’s motion to dismiss the summonses is on file with Human Rights Watch.

<sup>190</sup> Bronx District Attorney’s Twitter page, <https://twitter.com/BronxDAClark/status/1303423715682770946?s=20> (accessed September 22, 2020).

<sup>191</sup> Human Rights Watch email correspondence with Bronx District Attorney’s office, September 25, 2020.

<sup>192</sup> See section above on legal observers in Chapter 2 “Protest in Mott Haven.”

<sup>193</sup> The curfew order stated: “Failure to comply with this Order shall result in orders to disperse, and any person who knowingly violates the provisions in this Order shall be guilty of a Class B misdemeanor.” City of New York Mayor’s Office, Executive Order No. 118 Declaration of Local State of Emergency, June 1, 2020, <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-118.pdf> (accessed September 22, 2020).

## IV. The Operation's Cost

The June 4 protest happened against a national backdrop of calls to defund or divest from police departments, shifting resources away from police forces and instead investing in communities, education, and services to reduce social inequities.

The protest also occurred weeks before the New York City Council was set to vote on the city budget for fiscal year 2021. Largely because of the impact of the coronavirus pandemic, the city faced a \$9 billion deficit that meant significant cuts to expenses.<sup>194</sup> Mayor de Blasio's executive budget proposal included cuts to many city services, including education and youth programs and infrastructure development that is vital to low-socioeconomic communities like Mott Haven.<sup>195</sup>

The proposal also included a \$65 million cut to the Fair Fares program, one of the city's only programs offering discounted public transit rides for low-income New Yorkers.<sup>196</sup> These were the types of issues that the previous FTP protests had sought to address. In December 2019, the Metropolitan Transit Authority (MTA) voted to spend an additional \$250 million to add 500 new police officers to the subways in an attempt to save \$200 million that the MTA believed it was losing due to fare evasion.<sup>197</sup> In response, the FTP<sub>3</sub> protest in January 2020 called for better allocation of that money, specifically investing in free public transit, better MTA accessibility, ending the harassment of subway vendors and performers, and getting police officers out of the subways.<sup>198</sup> Even at the height of the

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<sup>194</sup> Jimmy Vielkind and Katie Honan, "New York City Faces Toughest Fiscal Crisis Since the 1970s," *Wall Street Journal*, August 23, 2020, <https://www.wsj.com/articles/new-york-city-faces-toughest-fiscal-crisis-since-the-1970s-11598205600> (accessed August 24, 2020).

<sup>195</sup> Communities United For Police Reform, "The Path Forward: How to Defund the NYPD, Invest in Safer Communities, and Make New York Safer," June 16, 2020, [https://www.changethenypd.org/sites/default/files/cpr\\_budget\\_justice\\_report\\_final\\_v3.pdf](https://www.changethenypd.org/sites/default/files/cpr_budget_justice_report_final_v3.pdf) (accessed August 24, 2020).

<sup>196</sup> Gersh Kuntzman, "The Budget Pain: Mayor's Fair Fares Cut Falls Heavily on Lower-Income Transit Riders," *StreetsBlog NYC*, June 30, 2020, <https://nyc.streetsblog.org/2020/06/30/the-budget-pain-mayors-fair-fares-cut-falls-heavily-on-lower-income-transit-riders/> (accessed August 24, 2020).

<sup>197</sup> Dave Colon, "MTA Will Spend \$249M on New Cops to Save \$200M on Fare Evasion," *StreetsBlog NYC*, November 14, 2019, <https://nyc.streetsblog.org/2019/11/14/mta-will-spend-249m-on-new-cops-to-save-200m-on-fare-evasion/> (accessed August 24, 2020); "Hiring 500 More Police Officers for the Subway is a Waste of Funds," *New York Times*, December 20, 2019, <https://www.nytimes.com/2019/12/20/opinion/subways-police.html> (accessed August 24, 2020).

<sup>198</sup> FTP<sub>III</sub> Operations Manual, [https://static1.squarespace.com/static/5c5e0c57d86cc9226827c754/t/5e1e7abd10e8a810447cb3b5/1579055814678/FTP3\\_OperationsManual.pdf](https://static1.squarespace.com/static/5c5e0c57d86cc9226827c754/t/5e1e7abd10e8a810447cb3b5/1579055814678/FTP3_OperationsManual.pdf) (accessed August 24, 2020).

pandemic in the city in April, New York Governor Andrew Cuomo said he would hire more police, if needed, to clear out homeless people who slept or stayed in the subway.<sup>199</sup>

At the same time, the proposed budget barely included any cuts to the New York Police Department's budget of \$5.6 billion, or the additional \$5.3 billion in centrally allocated costs for fringe benefits, pensions, and debt service.<sup>200</sup> While the city was faced with laying off 22,000 municipal workers, the NYPD was not even put under a hiring freeze.<sup>201</sup> New doctors, social workers, and guidance counselors were all cut from the city budget, but even after significant pressure, the final adopted budget only canceled one of four scheduled police recruitment classes.<sup>202</sup>

For over a week before the City Council was set to vote on the budget on June 30, frustrated and angry New Yorkers camped out at City Hall to demand that at least \$1 billion be cut from the NYPD.<sup>203</sup> The adopted budget did claim to shift \$1 billion away from the police but it was almost entirely budgetary maneuvers that did nothing to fundamentally reduce the role or reach of policing.<sup>204</sup> For instance, \$326 million for school safety officers was moved from the NYPD to the Department of Education, and even this budgetary shift would not take place for another year, despite being counted towards this year's cuts.<sup>205</sup> The largest alleged savings was from a \$350 million cut in projected overtime expenses, with no clear

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<sup>199</sup> David Meyer, "MTA will hire more cops if NYC keeps ignoring homeless in subways," *New York Post*, April 28, 2020, <https://nypost.com/2020/04/28/mta-to-hire-more-cops-if-nyc-keeps-ignoring-homeless-in-subways/> (accessed August 25, 2020).

<sup>200</sup> "Seven Facts About the NYPD Budget," Citizens Budget Commission press release, June 12, 2020, <https://cbcny.org/research/seven-facts-about-nypd-budget> (accessed August 19, 2020).

<sup>201</sup> Dana Rubenstein and Christina Goldbaum, "Pandemic May Force New York City to Lay Off 22,000 Workers," *New York Times*, June 24, 2020, <https://www.nytimes.com/2020/06/24/nyregion/budget-layoffs-nyc-mta-coronavirus.html> (accessed August 24, 2020).

<sup>202</sup> Kimberly Dole, "City budget sends 'wrong message': Public Advocate Jumaane Williams fires back at de Blasio," *Radio.com*, July 1, 2020, <https://1010wins.radio.com/articles/city-budget-sends-the-wrong-message-public-advocate-says> (accessed August 25, 2020).

<sup>203</sup> Juliana Kim, "How the Floyd Protests Turned Into a 24-Hour 'Occupy City Hall' in N.Y.," *New York Times*, June 28, 2020, <https://www.nytimes.com/2020/06/28/nyregion/occupy-city-hall-nyc.html> (accessed August 28, 2020).

<sup>204</sup> Dana Rubenstein and Jeffery C. Mays, "Nearly \$1 Billion Is Shifted From Police in Budget That Pleases No One," *New York Times*, June 30, 2020, <https://www.nytimes.com/2020/06/30/nyregion/nypd-budget.html> (accessed August 28, 2020).

<sup>205</sup> Joe Anuta, "School safety agents will stay under NYPD this year, despite city's claims of \$1B cut," *Politico*, <https://www.politico.com/states/new-york/albany/story/2020/07/02/school-safety-agents-will-stay-under-nypd-this-year-despite-citys-claims-of-1b-cut-1296868> (accessed August 28, 2020).

plans on how to enforce that reduction.<sup>206</sup> The New York City Independent Budget Office projected that the NYPD will surpass their overtime cap by \$400 million this year.<sup>207</sup>

## Police Deployment in Mott Haven

The police force that showed up to the Mott Haven protest, outfitted with modern riot gear, stood out in a city facing a serious fiscal deficit. Many in the Mott Haven community expressed shock, having seen the city struggle to equip its healthcare workers with personal protective equipment and their neighbors struggling to feed their families during the pandemic. In a live video, protester Abdourahamane Diallo expressed his frustrations about the number of officers at the start of the march:

This is congressional 15 District. It's the poorest [urban] district in the country. You can imagine the frustration of the community that lives here. You can imagine how people in this community are suffering. You can imagine the danger, especially with this Covid-19. ... So we have tons of police cars. We have all these police, waiting in all these helmets and all of that stuff, while people working in a hospital don't even have masks. Some of those nurses and doctors are wearing garbage bags. Why are we giving \$6 billion to the NYPD, really, instead of cutting down that money and bringing it to the impacted community, the under-served community?<sup>208</sup>

In a review of the video footage on June 4, Human Rights Watch counted well over 100 officers at the scene, including at least 25 supervisory officers – chiefs, lieutenants, captains, or inspectors in white shirts. Human Rights Watch identified officers in multiple uniforms, including officers from local precincts in regular patrolmen gear, officers in riot gear, officers outfitted in black bicycle gear, plainclothes officers, and officers in brown vests. There were also officers from the Legal Bureau, which advises the NYPD on the lawfulness of their actions, the Technical Assistance Response Unit, which assists in surveillance and specialized investigative equipment at large-scale demonstrations, and the Strategic Response Group (SRG), a specialized unit of officers dedicated to rapidly

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<sup>206</sup> “Was the NYPD Budget Cut by \$1 Billion?” CBCNY blog, August 13, 2020, [https://cbcny.org/research/was-nypd-budget-cut-1-billion#:~:text=\(See%20Table%201.\),planned%20in%20the%20Executive%20Budget](https://cbcny.org/research/was-nypd-budget-cut-1-billion#:~:text=(See%20Table%201.),planned%20in%20the%20Executive%20Budget) (accessed August 28, 2020).

<sup>207</sup> Nolan Hicks, “NYPD estimated to blow new overtime cap by \$400M: budget watchdog,” *New York Post*, July 21, 2020, <https://nypost.com/2020/07/21/nypd-estimated-to-blow-new-overtime-cap-by-400m-watchdog/> (accessed August 28, 2020).

<sup>208</sup> Abdourahamane Diallo’s Facebook page, <https://www.facebook.com/abdourahamane.diallo.79/videos/2906704476074281> (accessed August 27, 2020).

responding to terrorist attacks, civil unrest, or high-profile events.<sup>209</sup> According to video footage, legal observers, and others present at the protest, many police officers had covered up their badge numbers with tape or misplaced mourning bands.<sup>210</sup>

Even the highest-ranking uniformed member of the NYPD, Chief of Department Terence Monahan, was on the scene and appears to have commanded the operation. Monahan joined the force in 1982 and rose through the ranks as a strong proponent of “stop and frisk” (where officers systematically detain or stop people with little or no suspicion that they have committed a crime, then conduct a “pat down” or sometimes more extensive searches for weapons or drugs) and the “broken windows” theory of policing, which asserts that strict police enforcement of minor rule violations will deter more serious crimes.<sup>211</sup> He has staunchly opposed reform efforts, including bail reform and legislation that would make it a misdemeanor for police officers to use chokeholds or kneel on suspects during arrests.<sup>212</sup>

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<sup>209</sup> The Strategic Response Group has a history of trying to suppress Black Lives Matter protests with aggressive tactics and military-grade equipment. After public outrage, former Chief of the Department James O’Neil pledged to use the unit only for counterterrorism work, which either never came to fruition or suggests an improperly expansive view of the term “counterterrorism.” “NYPD Unveils New Unmanned Aircraft System Program,” NYPD press release, December 4, 2018, <https://www1.nyc.gov/site/nypd/news/p1204a/nypd-new-unmanned-aircraft-system-program#/o> (accessed August 24, 2020); Scott Heins, “A Visit With The ‘Goon Squad’: Meet The NYPD’s Specially Trained Protest Police,” *Gothamist*, December 17, 2015, [https://web.archive.org/web/20170208153603/http://gothamist.com/2015/12/17/bratton\\_nypd\\_protest\\_unit.php](https://web.archive.org/web/20170208153603/http://gothamist.com/2015/12/17/bratton_nypd_protest_unit.php) (accessed August 28, 2020); Ben Yakas, “NYPD: Fine, Maybe We Won’t Police Protests With Machine Guns,” *Gothamist*, January 30, 2015, [https://web.archive.org/web/20170208153553/http://gothamist.com/2015/01/30/well\\_just\\_use\\_handguns.php](https://web.archive.org/web/20170208153553/http://gothamist.com/2015/01/30/well_just_use_handguns.php) (accessed August 28, 2020).

<sup>210</sup> Confidential statements from NLG Legal Observers on file with Human Rights Watch; Human Rights Watch interview with protester, name withheld, July 21, 2020; Human Rights Watch interview with protester, name withheld, August 13, 2020. See also video from Jake Offenhartz’s Twitter page, <https://twitter.com/jangelooff/status/1268699468490330112> (accessed September 1, 2020); video from Sami Disu’s Facebook page, <https://www.facebook.com/sami.disu/videos/pcb.10219740437434499/10219740272230369/?type=2&theater> (accessed August 31, 2020); “NYPD Beats and Arrests Essential Workers in the Bronx, Lawyers, delivery men, Doctors, Nurses, Etc,” June 5, 2020, YouTube, video clip, <https://www.youtube.com/watch?v=P6SM2Czi61A> (accessed September 1, 2020).

<sup>211</sup> Theodore Hamm, “Media-Darling Cop Terence Monahan’s Legacy of Brutality,” *The Independent*, June 6, 2020, <https://indypendent.org/2020/06/media-darling-cop-terence-monahans-legacy-of-brutality/> (accessed August 26, 2020); Chris Smith, “The Controversial Crime-Fighting Program That Changed Big-City Policing Forever,” *New York Magazine*, March 2, 2018, <https://nymag.com/intelligencer/2018/03/the-crime-fighting-program-that-changed-new-york-forever.html> (accessed September 10, 2020). See also, United States Commission on Civil Rights, “The Civil Rights Implications of ‘Broken Windows’ Policing in NYC and General NYPD Accountability to the Public,” March 2018, <https://www.usccr.gov/pubs/2018/03-22-NYSAC.pdf> (accessed September 10, 2020).

<sup>212</sup> Nolan Hicks and Natalie Musumeci, “De Blasio blames coronavirus while NYPD chief says new restrictions caused crime wave,” *New York Post*, July 6, 2020, <https://nypost.com/2020/07/06/de-blasio-blames-nycs-bloody-weekend-crime-wave-on-coronavirus/> (accessed September 10, 2020); Tina Moore, “NYPD commish, chief of department blame shooting spike on bail reform, coronavirus, protests,” *New York Post*, June 30, 2020, <https://nypost.com/2020/06/30/nypd-chief-blames-shooting-spike-on-bail-reform-coronavirus-and-protests/> (accessed September 11, 2020); Daniel Cassidy, “NYPD Chief in

The coordinated assault on the June 4 protesters has similarities with the NYPD response to protests in 2004, when the Republican National Convention was held in Madison Square Garden in Manhattan. Monahan was a key player in the police operation at the time, when the same kettling and mass arrest tactics were deployed.<sup>213</sup> During one of the protests led by the War Resisters League on August 31, 2004, Monahan reportedly ordered officers to kettle and arrest 227 protesters. In an opinion piece in *The Guardian*, J. Iddhis Bing recounted the scene:

As soon as we turned down 16th Street, it started. New York police had been massing in great numbers along the east side of the park and, little did we know, on Irving Place as well. Very quickly we were kettled in on both sides of the block, the now familiar but then new flexible orange fencing keeping us from getting out. Easy prey...A strange, existential drama unfolded. We couldn't leave even though we weren't charged with anything. We were told to stand still or sit down – that included little old ladies out walking their dogs and restaurant take-out guys. Cops on bicycles appeared and handcuffed us, while menacing riot police glowered from the corners.<sup>214</sup>

The Civilian Complaint Review Board (CCRB) later singled out Monahan and criticized him for his role in the 2004 operation.<sup>215</sup>

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Leaked Video: Cops Shouldn't Worry About Chokehold Ban," *Forbes*, July 24, 2020, <https://www.forbes.com/sites/danielcassady/2020/07/24/nypd-chief-in-leaked-video-cops-shouldnt-worry-about-chokehold-ban/#7cafe151423d> (accessed September 11, 2020); Amanda Woods and Natalie Musumeci, "NYPD's Terence Monahan calls portion of anti-chokehold bill 'dangerous,'" *New York Post*, July 8, 2020, <https://nypost.com/2020/07/08/nypds-monahan-calls-part-of-anti-chokehold-bill-dangerous/> (accessed September 11, 2020).

<sup>213</sup> Greg B. Smith, "Top NYPD Curfew Cop Faulted for Mass Arrest Tactics During 2004 GOP Convention," *The City*, June 5, 2020, <https://www.thecity.nyc/2020/6/5/21282199/top-nypd-curfew-cop-faulted-for-mass-arrest-tactics-during-2004-gop-convention> (accessed August 26, 2020).

<sup>214</sup> J. Iddhis Bing, "I was at the 2004 GOP contention protest. It was the worst of US policing," *The Guardian*, January 15, 2014, <https://www.theguardian.com/commentisfree/2014/jan/15/2004-republican-convention-protests-new-york-witness> (accessed August 19, 2020).

<sup>215</sup> Greg B. Smith, "Top NYPD Curfew Cop Faulted for Mass Arrest Tactics During 2004 GOP Convention," *The City*, June 5, 2020, <https://www.thecity.nyc/2020/6/5/21282199/top-nypd-curfew-cop-faulted-for-mass-arrest-tactics-during-2004-gop-convention> (accessed August 26, 2020). See also, New York Civil Liberties Union, "Rights and Wrongs at the RNC: A Special Report about Police and Protest at the Republican National Convention," 2005, [https://www.nyclu.org/sites/default/files/publications/nyclu\\_pub\\_rights\\_wrongs\\_rnc.pdf](https://www.nyclu.org/sites/default/files/publications/nyclu_pub_rights_wrongs_rnc.pdf) (accessed September 23, 2020).



Monahan was also named as a defendant in a 2015 class action suit led by a group of minority NYPD officers about the racially discriminatory impacts of quota-based policing, with fixed goals for arrests and courts summonses.<sup>216</sup> The lawsuit is ongoing.<sup>217</sup>

Three days before the operation in Mott Haven, Monahan posed for photographers as he took a knee with protesters in Manhattan's Washington Square Park, attempting to convey solidarity with the Black Lives Matter movement.<sup>218</sup>

Despite Covid-19 being the leading cause of death for police officers in the United States in 2020, and face mask requirements in effect in New York City, Monahan did not lead by example during the summer of protests: he was seen on camera at the Mott Haven protest and other protests without a face mask.<sup>219</sup>

The NYPD did not respond to Human Rights Watch's request for a meeting with Monahan or its request for comment regarding the number of police officers and which units were deployed to the protest.

## Cost of the Operation

Human Rights Watch attempted to break down the various costs to the NYPD and New York City taxpayers of the police crackdown on the June 4 protest in Mott Haven, and the resulting misconduct complaints, claims, and lawsuits. The NYPD did not respond to Human Rights Watch's questions regarding the overtime and specific costs of this operation, and the complaints, claims and lawsuits are still being investigated, so a precise figure remains unclear at time of writing. What follows is an overview of the types of costs associated with the police operation and resulting misconduct, relevant publicly available data, and the costs of other comparable situations.

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<sup>216</sup> *Raymond v. City of N.Y.*, 317 F. Supp. 3d 746 (S.D.N.Y. 2018), <https://casetext.com/case/raymond-v-city-of-ny-2> (accessed September 10, 2020); Saki Knafo, "A Black Police Officer's Fight Against the N.Y.P.D.," *New York Times*, February 18, 2016, <https://www.nytimes.com/2016/02/21/magazine/a-black-police-officers-fight-against-the-nypd.html> (accessed September 10, 2020).

<sup>217</sup> *Raymond v. City of N.Y.*, 317 F. Supp. 3d 746 (S.D.N.Y. 2018), <https://www.clearinghouse.net/detail.php?id=15194> (accessed September 10, 2020).

<sup>218</sup> Tina Moore and Julia Marsh, "De Blasio backs NYPD chief of department against criticism of response to protests," *New York Post*, June 23, 2020, <https://nypost.com/2020/06/23/de-blasio-backs-terence-monahan-against-criticism-of-protest-response/> (accessed August 25, 2020).

<sup>219</sup> Video on file with Human Rights Watch. See also, Craig McCarthy, "Covid-19 is the leading cause of death for US police officers in 2020," *New York Post*, September 3, 2020, <https://nypost.com/2020/09/03/covid-19-the-leading-cause-of-death-for-us-police-officers-in-2020/> (accessed September 11, 2020).

Included in the taxpayer-funded budgets for the NYPD and the broader criminal justice system are the costs associated with paying, training, equipping, and transporting the scores of police officers and supervisors who were deployed to the Mott Haven protest, as well as the costs associated with arresting, transporting, processing, and potentially prosecuting the 263 people arrested during the protest.

A 2009 study estimated that the marginal taxpayer cost for a single arrest in New York City was \$359, or \$438 in 2020 dollars, which accounts for the police time to book an arrestee and make court appearances.<sup>220</sup> Significant resources also go into processing, defending, and prosecuting that arrest. Taxpayers also foot the bill for the District Attorney's costs, the court costs, and in 99 percent of cases, the defense attorney.<sup>221</sup> A 2005 study estimated the marginal taxpayer cost of an arraignment to be \$720, which in 2020 equates to \$879.<sup>222</sup>

The NYPD also likely spent a significant amount on overtime for the police officers who were deployed to the protest and involved in the arrests. On any given day, the NYPD typically spends between \$1 million and \$1.4 million on overtime.<sup>223</sup> On June 4, the NYPD spent \$10.6 million on overtime, according to the New York City Independent Budget Office.<sup>224</sup> This suggests that about \$9.2 million was spent on the extra police deployment during protests and the enforcement of the city-wide curfew on June 4. Human Rights

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<sup>220</sup> This number was calculated using the estimated marginal cost of \$359 in 2009 dollars calculated by Redcross, Millenky, Rudd, & Levshin, 2012. See Office of Planning, Research, and Evaluation (OPRE) Administration for Children and Families of the US Department of Health and Human Services, "More Than a Job: Final Results from the Evaluation Center for Employment Opportunities Transitional Jobs Program," January 2012, [https://www.vera.org/downloads/Publications/more-than-a-job-final-results-from-the-evaluation-of-the-center-for-employment-opportunities-ceo-transitional-jobs-program/legacy\\_downloads/more-than-a-job-full-report.pdf](https://www.vera.org/downloads/Publications/more-than-a-job-final-results-from-the-evaluation-of-the-center-for-employment-opportunities-ceo-transitional-jobs-program/legacy_downloads/more-than-a-job-full-report.pdf) (accessed August 19, 2020). Inflation rate calculated using the CPI Inflation Calculator, <https://data.bls.gov/cgi-bin/cpicalc.pl>.

<sup>221</sup> Kimberly Dalve and Becca Cadoff, "An Evaluation of Pre-Arrest Diversion Program in New York City," Center for Court Innovation, [https://www.courtinnovation.org/sites/default/files/media/document/2019/projectreset\\_eval\\_2019.pdf](https://www.courtinnovation.org/sites/default/files/media/document/2019/projectreset_eval_2019.pdf) (accessed August 24, 2020).

<sup>222</sup> It is not clear how this estimate may vary for a summons court appearance versus an appearance on a desk appearance ticket. Jim Parsons, Qing Wei, Joshua Rinaldi, Christian Henrichson, Talia Sandwick, Travis Wendel, Ernest Drucker, Michael Ostermann, Samuel DeWitt, Todd Clear, "A Natural Experiment in Reform: Analyzing Drug Policy Change in New York City, Final Report," National Institute of Justice, January 2015, <https://www.ncjrs.gov/pdffiles1/nij/grants/248524.pdf> (accessed August 19, 2020). Inflation rate calculated using the CPI Inflation Calculator, <https://data.bls.gov/cgi-bin/cpicalc.pl> (accessed August 18, 2019).

<sup>223</sup> New York City Independent Budget Office's Twitter's page, <https://twitter.com/nycibo/status/1276506612551860224?s=20> (accessed August 28, 2020).

<sup>224</sup> New York City Independent Budget Office's Twitter page, <https://twitter.com/nycibo/status/1299069955103744001> (accessed September 20, 2020); Human Rights Watch interview with Doug Turetsky, Independent Budget Office, August 27, 2020.

Watch was unable to determine the precise amount of overtime stemming from the Mott Haven protest specifically.

### *The Hidden Costs of Police Misconduct*

The largest cost of this operation, however, will likely not come from the policing and arrests but rather, the resulting misconduct complaints, investigations, and lawsuits. Allegations of police misconduct are investigated and adjudicated by multiple bodies in the New York City system.

The Civilian Complaint Review Board (CCRB) is a city-funded, independent watchdog agency tasked with investigating civilian complaints against the NYPD. The CCRB had an \$18.5 million budget in FY 2019 and investigated 5,236 cases.<sup>225</sup> As of August 11, the CCRB had received 17 complaints involving 99 allegations of police misconduct stemming from the Mott Haven protest on June 4.<sup>226</sup>

The New York City Comptroller's Office is responsible for investigating claims against the NYPD, including tort claims for personal injury and property damage. In FY 2019, the Comptroller's Office paid out \$220.1 million in settlements and judgments for 5,848 tort claims against the NYPD.<sup>227</sup> These accounted for 36 percent of the total cost of tort claims against the city.<sup>228</sup>

In many cases, the Comptroller's Office will attempt to settle a claim before it turns into a lawsuit to save money on litigations costs, legal fees, and interest.<sup>229</sup> At times, however, the case proceeds. During the last fiscal year, for example, in addition to the \$220 million spent on claims, the city paid out at least \$69 million in lawsuit settlements for civil rights

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<sup>225</sup> The Council of the City of New York, "Report of the Finance Division on the Fiscal 2021 Preliminary Plan and Preliminary Mayor's Management Report," March 4, 2020, <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2020/03/054-CCRB.pdf> (accessed August 19, 2020).

<sup>226</sup> Human Rights Watch email correspondence with CCRB official, August 11, 2020.

<sup>227</sup> New York City Comptroller's Office, "Annual Claims Report," 2019, <https://comptroller.nyc.gov/reports/annual-claims-report/> (accessed August 18, 2020).

<sup>228</sup> Ibid.

<sup>229</sup> Benjamin Weiser, "New York City Comptroller Seeks to Settle Claim by Eric Garner's Family," *New York Times*, December 16, 2014, <https://www.nytimes.com/2014/12/17/nyregion/scott-stringer-comptroller-seeks-eric-garner-settlement.html> (accessed August 24, 2020).

violations by the NYPD.<sup>230</sup> The Law Department is slated with defending lawsuits against the city. It receives a \$257 million budget, which includes an entire division devoted to defending the police against misconduct cases.<sup>231</sup>

In the 90-day period after the Mott Haven protest on June 4, at least 98 claims were filed with the Comptroller's Office.<sup>232</sup> How much these cases will end up costing the city remains unclear, but lawsuits related to protests during the 2004 Republican National Convention (RNC) offer a helpful guide.

During that convention, the NYPD deployed similar tactics during various demonstrations, arresting over 1,800 protesters, legal observers, and journalists. One protest in particular bears a striking resemblance to what happened in Mott Haven. On August 31, 2004, a crowd of protesters gathered in Lower Manhattan. Terence Monahan, who was a deputy chief inspector at the time, ordered officers to kettle the crowd and 227 protesters were arrested. The police held the protesters for days in a filthy bus depot on a Hudson River pier, and the charges against them were later dismissed.<sup>233</sup>

Multiple lawsuits challenged the indiscriminate mass arrests by the NYPD, the arbitrary detention, and the cruel and inhuman conditions of confinement. The city spent \$18

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<sup>230</sup> This number does not include cases that took more than five years to reach a disposition. New York City Department of Law, NYC Administrative Code § 7-114: Civil Actions Regarding the Police Department, September 2017, <https://www1.nyc.gov/site/law/public-resources/nyc-administrative-code-7-114.page#:~:text=This%20law%20requires%20the%20City's,the%20preceding%20five%20year%20period> (accessed August 19, 2020).

<sup>231</sup> The Council of the City of New York, "Report of the Finance Division on the Fiscal 2021 Preliminary Plan and the Fiscal 2020 Preliminary Mayor's Management Report for the Law Department," March 20, 2020, <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2020/03/025-LAW.pdf> (accessed August 25, 2020); "NYPD Fights Back: New York City Law Department Announces New Unit Focused on Defending Police Misconduct Cases Filed in State Court," Peterson, Delle, Cave LLP press release, <https://www.nycpolicemisconductlawyers.com/nypd-fights-back-new-york-city-law-department-announcews-new-unit.html> (Accessed August 25, 2020). In FY 2017, the Law Department got \$17.8 million to fund 144 new positions to handle certain lawsuits brought against the police department. The Council of the City of New York, "Report of the Finance Division on the Fiscal 2021 Preliminary Plan and the Fiscal 2020 Preliminary Mayor's Management Report for the Law Department;" Benjamin Weiser, "New York city Takes Steps to Better Fight Suits Against Police," February 4, 2016, <https://www.nytimes.com/2016/02/05/nyregion/new-york-city-takes-steps-to-better-fight-suits-against-police.html?action=click&module=RelatedCoverage&pgtype=Article&region=Footer> (accessed August 24, 2020).

<sup>232</sup> New York City Comptroller's Office response to Human Rights Watch's FOIL request, September 8, 2020; Chelsia Rose Marcius and Rocco Parascandola, "82 protestors file to sue city alleging police brutality at George Floyd events," *New York Daily News*, <https://www.nydailynews.com/new-york/nyc-crime/ny-police-brutality-allegations-mott-haven-george-floyd-nypd-20200823-25zdxz5vhpfx66uuowforiu-story.html> (accessed August 24, 2020).

<sup>233</sup> "Victory in Unlawful Mass Arrest During 2004 RNC The Largest Protests Settlement in History," NYCLU press release, January 15, 2014, <https://www.nyclu.org/en/press-releases/victory-unlawful-mass-arrest-during-2004-rnc-largest-protest-settlement-history> (accessed August 31, 2020).

million to settle the RNC-related lawsuits in 2014, but the ultimate price tag to taxpayers was about double that, because the city spent about the same amount defending the cases.<sup>234</sup>

Human Rights Watch interviews with New York civil rights attorneys and the review of 12 claims with the city suggests that comparable cases can be made for the Mott Haven protest, considering the similarity of the mass arrest procedure and the added effect of coronavirus on the conditions of confinement. A settlement document from one of the 2004 RNC protest lawsuits lists \$5,000 to each plaintiff arrested in one of the mass arrest operations, \$1,000 to each plaintiff subjected to excessive detention or cruel conditions of confinement, \$467,000 for the 24 class action representatives, and \$2.6 million for the attorney's fees and expenses.<sup>235</sup> Based on the RNC settlements, Human Rights Watch estimates that lawsuits related to the Mott Haven protest could end up costing New York City taxpayers several million dollars.

The costs of the lawsuits aside, investigations into alleged misconduct by the NYPD rarely lead to any disciplinary measures, prosecutions of police officers, admonishments, or incentives to change behavior going forward. Instead, it is New York City residents, particularly Black and brown people, who pay the price as police officers are emboldened to continue with their abusive behavior.

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<sup>234</sup> Jim Dwyer, "Mass Arrests During '04 Convention Leave Big Bill and Lingering Mystery," *New York Times*, January 7, 2014, <https://www.nytimes.com/2014/01/08/nyregion/mass-arrests-during-04-convention-leave-big-bill-and-lingering-mystery.html> (accessed August 26, 2020).

<sup>235</sup> *Deidre MacNamara v. City of New York*, US Southern District of New York (1:04-cv-09216-RJS-JCF), Document 535, Stipulation and order of class action settlement.

## V. Ineffective Accountability that Fuels Impunity

In New York City, as across much of the United States, existing structures to hold police officers to account for misconduct, violence, and abuse are largely ineffective, permitting officers to commit abuses with impunity.<sup>236</sup> This lack of accountability reflects the design of policing in the United States and emboldens police officers and commanders, such as those in Mott Haven on June 4, to assault, beat, and arbitrarily detain protesters and legal observers without fear of any consequences. This system has also left the victims of abuse with few options to seek justice and redress.

Across the country, legislators have passed laws, judges have imposed doctrines, and police departments and prosecutors have implemented policies and practices that have all contributed to a system that protects officers and police departments from meaningful scrutiny.<sup>237</sup> Police unions negotiate contracts that give officers protection from discipline and accountability; they also lobby effectively for legislation that provides such protections.<sup>238</sup>

Typically, police departments are tasked with investigating and disciplining their own personnel.<sup>239</sup> They have incentives to exonerate individual officers, to protect the department from liability, and to insulate their behavior from scrutiny that might limit police power. Police investigate misconduct in ways that give the accused officers advantages that other crime suspects do not have and appear designed to establish the officers' innocence, rather than the truth.<sup>240</sup>

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<sup>236</sup> Parts of this chapter are adapted from Human Rights Watch's 2020 report: *A Roadmap for Re-imagining Public Safety in the United States: 14 Recommendations on Policing, Community Investment, and Accountability*, (New York: Human Rights Watch, 2020), <https://www.hrw.org/news/2020/08/12/roadmap-re-imagining-public-safety-united-states>.

<sup>237</sup> Human Rights Watch, *Shielded From Justice: Police Brutality and Accountability in the United States*, (New York: Human Rights Watch, 1998), <https://www.hrw.org/legacy/reports98/police/uspo14.html>.

<sup>238</sup> Steven Greenhouse, "How Police Unions Enable and Conceal Abuses of Power," *New Yorker*, June 18, 2020, <https://www.newyorker.com/news/news-desk/how-police-union-power-helped-increase-abuses> (accessed August 24, 2020); Christopher Ingraham, "Police unions and police misconduct: What the research says about the connection," *Washington Post*, June 10, 2020, <https://www.washingtonpost.com/business/2020/06/10/police-unions-violence-research-george-floyd/> (accessed August 24, 2020).

<sup>239</sup> Michael Bell, "A cop killed my son. We can't let police investigate themselves," *Washington Post*, March 29, 2018, [https://www.washingtonpost.com/opinions/a-cop-killed-my-son-we-cant-let-police-investigate-themselves/2018/03/29/booff482-31df-11e8-8bdd-cdb33a5eef83\\_story.html](https://www.washingtonpost.com/opinions/a-cop-killed-my-son-we-cant-let-police-investigate-themselves/2018/03/29/booff482-31df-11e8-8bdd-cdb33a5eef83_story.html) (accessed August 24, 2020).

<sup>240</sup> *A Roadmap for Re-imagining Public Safety in the United States: 14 Recommendations on Policing, Community Investment, and Accountability*, (New York: Human Rights Watch, 2020), <https://www.hrw.org/news/2020/08/12/roadmap-re-imagining-public-safety-united-states>.

## Police Oversight in New York City

### *Internal Oversight Mechanisms*

The Internal Affairs Bureau (IAB) is an internal arm of the New York Police Department (NYPD) that investigates police misconduct and corruption reported by members of the public and members of the police force.<sup>241</sup> Multiple studies have found that IAB investigations result in few findings of misconduct, which is unsurprising considering the inherent conflicts with this type of self-policing.<sup>242</sup> Officers rotate in and out of working for the IAB and therefore may be tasked with investigating their own colleagues.<sup>243</sup>

Due to strong protections for officers in union-negotiated contracts, in the few cases where the IAB does find that misconduct occurred, the case is referred to the Department Advocate's Office (DAO) where the allegations are put through a full-fledged administrative trial. The DAO functions as a prosecutor and police officers are represented by their union attorneys. Administrative judges oversee the process in a fashion very similar to criminal trials. Not only can officers negotiate plea deals or attempt mitigation, but if they are ultimately found guilty, the administrative judge can only make a recommendation to the commissioner for the appropriate punishment. The NYPD police commissioner has the final say on any punishment handed down and can choose to ignore the judge's recommendation entirely. For this reason, IAB cases rarely result in serious discipline, let alone involuntary discharges of officers.<sup>244</sup>

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<sup>241</sup> NYPD Internal Affairs, "Deputy Commissioner of Internal Affairs: Joseph Reznick,"

<https://www1.nyc.gov/site/nypd/bureaus/investigative/internal-affairs.page> (accessed August 24, 2020).

<sup>242</sup> The City of New York Department of Investigation, Examination by DOI's Office of the Inspector General for the NYPD Identifies Deficiencies and Recommends Improvements in How NYPD Handles Complaints of Biased Policing, June 26, 2019, [https://www1.nyc.gov/assets/doi/reports/pdf/2019/Jun/19BiasRpt\\_62619.pdf](https://www1.nyc.gov/assets/doi/reports/pdf/2019/Jun/19BiasRpt_62619.pdf) (accessed August 31, 2020); The City of New York Department of Investigation, DOI's Office of the Inspector General for the NYPD Issues Report on Police Use of Force Finding Failure to Properly Instruct on De-Escalation Tactics and Impose Discipline, October 1, 2015, [https://www1.nyc.gov/assets/doi/reports/pdf/2015/2015-10-01-Pr\\_uofrpt.pdf](https://www1.nyc.gov/assets/doi/reports/pdf/2015/2015-10-01-Pr_uofrpt.pdf) (accessed August 31, 2020); Yoav Gonen, Peter Senzamici and Carson Kessler, "NYPD Discipline Review Panel Found Dozens of Cops Deserved More Serious Punishment," *The City*, June 2, 2020, <https://www.thecity.nyc/2020/6/2/21278795/nypd-discipline-panel-found-cops-deserved-worse-punishment> (accessed August 31, 2020); Kendall Taggart and Mike Hayes, "Secret NYPD Files: Officers Who Lie and Brutally Beat People Can Keep Their Jobs," *Buzzfeed*, March 5, 2018, <https://www.buzzfeednews.com/article/kendalltaggart/secret-nypd-files-hundreds-of-officers-committed-serious> (accessed August 31, 2020).

<sup>243</sup> The Report of the Independent Panel on the Disciplinary System of the New York City Police Department, January 25, 2019, <https://www.independentpanelreportnypd.net/assets/report.pdf> (accessed September 1, 2020).

<sup>244</sup> New York City commission to Combat Police Corruption, "Nineteenth Annual Report of the Commission," December 2019, <https://www1.nyc.gov/assets/ccpc/downloads/pdf/Annual-Nineteen-Report.pdf> (accessed August 24, 2020); Kendall Taggart and Mike Hayes, "Secret NYPD Files: Officers Who Lie and Brutally Beat People Can Keep Their Jobs," *Buzzfeed News*, March 5, 2018, <https://www.buzzfeednews.com/article/kendalltaggart/secret-nypd-files-hundreds-of-officers-committed-serious> (accessed August 25, 2020).

A review of NYPD complaint data from 2011 through 2015 revealed that 319 officers committed offenses serious enough to merit dismissal, but they kept their jobs.<sup>245</sup> Even in the most severe cases in which officers are forced to resign or are terminated by the department, they can generally go work for other departments in other jurisdictions.<sup>246</sup>

The NYPD internal disciplinary process is reviewed by the Commission to Combat Police Corruption (CCPC), which the city established in 1995 to monitor the NYPD's corruption control policies and procedures.<sup>247</sup> In their most recent review of a sample of IAB investigations, the CCPC found that in only 23 percent of cases was an IAB disposition even reached on the most serious allegations and in only 14 percent of cases was that allegation substantiated.<sup>248</sup> They also found that, on average, investigations took 12 months to complete and 21 months before any disposition on discipline.<sup>249</sup> Officers were most commonly disciplined by loss of vacation days, an ironic punishment considering it increased the amount of time they would spend on duty.<sup>250</sup> The commission described one incident in which an officer punched a woman in the face, knocking her unconscious and causing two facial fractures. The officer told investigators the woman "lunged into his open hand," which was contradicted by five witnesses. The officer was punished by the forfeiture of 30 vacation days.<sup>251</sup> While the CCPC monitors these bodies, they have limited investigative power and no authority to implement any reforms or changes.<sup>252</sup> The NYPD repeatedly fails to implement their recommendations.<sup>253</sup>

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<sup>245</sup> United States Commission on Civil Rights, "Police Use Force: An Examination of Modern Policing Practices," November 2018, <https://www.usccr.gov/pubs/2018/11-15-Police-Force.pdf> (accessed August 24, 2020), p. 62.

<sup>246</sup> Timothy Williams, "Cast-Out Police Officers Are Often Hired in Other Cities," *New York Times*, September 10, 2016, <https://www.nytimes.com/2016/09/11/us/whereabouts-of-cast-out-police-officers-other-cities-often-hire-them.html> (accessed August 24, 2020).

<sup>247</sup> New York City Commission to Combat Police Corruption, Resources page, <https://www1.nyc.gov/site/ccpc/index.page> (accessed August 25, 2020).

<sup>248</sup> New York City commission to Combat Police Corruption, "Nineteenth Annual Report of the Commission."

<sup>249</sup> Ibid.

<sup>250</sup> Ibid.

<sup>251</sup> Ibid.

<sup>252</sup> Sean Gardiner, "When Cops Go Bad Does the NYPD's Internal Affairs Bureau Even Notice?" *The Village Voice*, March 4, 2008, <https://www.villagevoice.com/2008/03/04/when-cops-go-bad-does-the-nypds-internal-affairs-bureau-even-notice/> (accessed August 25, 2020); New York City commission to Combat Police Corruption, "Nineteenth Annual Report of the Commission," December 2019, <https://www1.nyc.gov/assets/ccpc/downloads/pdf/Annual-Nineteen-Report.pdf> (accessed August 24, 2020).

<sup>253</sup> Ibid. See also "The Report of the Independent Panel on the Disciplinary System of the New York City Police Department," <https://www.independentpanelreportnypd.net/pages/43.html> (accessed August 25, 2020), p. 43.



## *Failure of Judicial Checks and Balances*

When police misconduct rises to criminal level, prosecutors also rarely file charges, even for the most egregious offenses.<sup>254</sup> A study of police killings across the United States from 2005 through 2018, occurring at a rate of around 1,000 per year, found that prosecutors filed murder or manslaughter charges only 97 times, resulting in 35 convictions of some charge and 42 acquittals or dismissals.<sup>255</sup> Prosecutors in New York did not file any charges against Officer Daniel Pantaleo for his 2014 killing of Eric Garner, captured on video. On-duty New York City police officers killed 179 people in the preceding 15 years, but prosecutors brought only three criminal indictments, netting one conviction with a sentence of community service and no prison time.<sup>256</sup> Of those killed, 86 percent were Black or Latinx.

One explanation for prosecutors' failure to bring charges against police officers is that they are not fully independent of police. Rather, they depend on maintaining close working relationships with the officers and departments that effectively create a conflict of interest.<sup>257</sup> There are also concerns about overcoming the difficult burden of proof in these types of cases, especially when faced with officers' reluctance to testify against their colleagues and juries' tendency to believe police.<sup>258</sup>

In response to the mass protests following the police killing of George Floyd, New York's Governor Andrew Cuomo signed an executive order in July 2015 that appoints the New York State Attorney General as a special prosecutor in matters relating to the deaths of unarmed

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<sup>254</sup> Human Rights Watch, *Shielded From Justice: Police Brutality and Accountability in the United States*.

<sup>255</sup> Philip M. Stinson, Chloe A. Wentzlof, and Megan L. Swinehart, "On-Duty Police Shootings: Officers Charged with Murder or Manslaughter 2005-2018," Criminal Justice Faculty Publications (2019), [https://scholarworks.bgsu.edu/cgi/viewcontent.cgi?article=1097&context=crim\\_just\\_pub](https://scholarworks.bgsu.edu/cgi/viewcontent.cgi?article=1097&context=crim_just_pub) (accessed August 24, 2020). The remaining 20 had not been resolved at the time of the study.

<sup>256</sup> Sarah Ryley et al., "Exclusive: In 179 fatalities involving on-duty NYPD cops in 15 years, only 3 cases led to indictments—and just 1 conviction," *New York Daily News*, December 8, 2014, <https://www.nydailynews.com/new-york/nyc-crime/179-nypd-involved-deaths-3-indicted-exclusive-article-1.2037357> (accessed August 24, 2020); Kristy Parker, "Prosecute the Police," *The Atlantic*, June 13, 2020, <https://www.theatlantic.com/ideas/archive/2020/06/prosecutors-need-to-do-their-part/612997/> (accessed September 1, 2020).

<sup>257</sup> Kate Levine, "Who Shouldn't Prosecute the Police," *Iowa Law Review* 101 (2016), <https://ilr.law.uiowa.edu/print/volume-101-issue-6/who-shouldnt-prosecute-the-police/> (accessed August 24, 2020). See also Asit S. Panwala, "The Failure of Local and Federal Prosecutors to Curb Police Brutality," 30 *Fordham Urb. L.J.* 639, 2002, <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2079&context=ulj> (accessed September 1, 2020).

<sup>258</sup> Asit S. Panwala, "The Failure of Local and Federal Prosecutors to Curb Police Brutality," 30 *Fordham Urb. L.J.* 639 (2002), <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=2079&context=ulj> (accessed August 25, 2020); Kristy Parker, "Prosecute the Police," *The Atlantic*, June 13, 2020, <https://www.theatlantic.com/ideas/archive/2020/06/prosecutors-need-to-do-their-part/612997/> (accessed August 25, 2020).

civilians caused by law enforcement officers.<sup>259</sup> This may make a difference in allowing for more independent investigations and prosecutions of the most extreme cases, but it will do nothing to address the lower-level police misconduct that occurs daily.

For similar reasons that prosecutors fail to bring charges against officers, they also repeatedly fail to hold officers accountable for violations of constitutional rights.<sup>260</sup> Prosecutors have the power to decline to prosecute or dismiss cases in which an officer's conduct was questionable or blatantly unconstitutional, as well as report those incidents to the department. But prosecutors have their own incentives to win cases and making a record of police abuse conflicts with that goal. Because prosecutors have an obligation to disclose police misconduct to the defense in certain circumstances, they have every incentive to avoid documenting it.<sup>261</sup> Prosecutors are often complicit in police misconduct and may even interchange police witnesses to avoid questions of officer credibility or conduct.<sup>262</sup> Even when prosecutors or judges find that police acted unlawfully, there are glaring holes in the feedback loops that would turn that finding into any reasonable discipline.<sup>263</sup>

### *Independent Oversight*

In response to the conflicts of interest when relying on stakeholders in the criminal justice system to police themselves, some cities have created independent oversight agencies.

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<sup>259</sup> "Governor Cuomo Signs Executive Order Appointing NYS Attorney General as Special Prosecutor in Cases Where Law Enforcement Officers Are Involved in Deaths of Civilians," press release from Governor of New York's webpage, July 8, 2015, <https://www.governor.ny.gov/news/governor-cuomo-signs-executive-order-appointing-nys-attorney-general-special-prosecutor-cases> (accessed August 24, 2020).

<sup>260</sup> Kate Levine and Joanna Schwartz, "Hold Prosecutors Accountable, Too," *Boston Review*, June 22, 2020, <http://bostonreview.net/law-justice/kate-levine-joanna-schwartz-hold-prosecutors-accountable-too> (accessed August 25, 2020).

<sup>261</sup> Even in cases in which there is a documented history of police misconduct, prosecutors are rarely sanctioned for not disclosing it. See Kate Levine and Joanna Schwartz, "Hold Prosecutors Accountable, Too," *Boston Review*, June 22, 2020, <http://bostonreview.net/law-justice/kate-levine-joanna-schwartz-hold-prosecutors-accountable-too> (accessed August 25, 2020); Andrew Smith, "Brady Obligations, Criminal Sanctions, and Solutions in a New Era of Scrutiny," 61 *Vanderbilt Law Review* 1935 (2019), <https://scholarship.law.vanderbilt.edu/cgi/viewcontent.cgi?article=1530&context=vlr> (accessed August 26, 2020); Jessica Brand, "The Epidemic of Brady Violations: Explained," *The Appeal*, April 25, 2018, <https://theappeal.org/the-epidemic-of-brady-violations-explained-94a38ad3c800/> (accessed August 26, 2020).

<sup>262</sup> David S. D'Amato, "Judges and prosecutors are complicit in injustice," *The Hill*, July 2, 2020, <https://thehill.com/opinion/judiciary/505582-judges-and-prosecutors-are-complicit-in-injustice> (accessed August 28, 2020).

<sup>263</sup> Joseph Goldstein, "'Testilying' by Police: A Stubborn Problem," *New York Times*, March 18, 2018, <https://www.nytimes.com/2018/03/18/nyregion/testilying-police-perjury-new-york.html> (accessed August 25, 2020).

In New York City, the agency empowered to receive and investigate civilian complaints about police force, discourtesy, abuse, and offensive behavior is the Civilian Complaint Review Board (CCRB).<sup>264</sup> While the CCRB's investigative staff is composed entirely of civilian employees, each of its 13 board members is delegated by various city officials and all are officially appointed by the mayor: the City Council chooses five board members (one from each borough), the mayor chooses five (including the chairperson), and the police commissioner chooses three board members who have law enforcement experience. So even here, conflict of interest concerns remain, given that public officials with a vested interest in protecting police officers have the authority to choose board members.

This has not prevented the NYPD from severely undermining the power of the CCRB at every turn. Even though they are legally obligated to do so, the NYPD has continually refused to share critical evidence as well as body camera footage with the CCRB.<sup>265</sup> The NYPD has also failed to enforce officers' compliance with investigations and appearances at CCRB interviews, which results in cases being marked unsubstantiated.<sup>266</sup> Police unions outright refused to acquiesce to police officers giving video interviews during the Covid-19 pandemic, resulting in a backlog of over 1,000 CCRB cases, likely including all the cases stemming from the Mott Haven protest.<sup>267</sup>

Besides the NYPD's and the police unions' obstructionism, the CCRB is also up against a difficult burden of proof because cases often come down to the officer's word versus the complainant's word. The CCRB must rely on victims and witnesses testifying multiple times, including in front of the officer, to a potentially traumatic event from which they may

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<sup>264</sup> "About CCRB" page, New York City government website, <https://www1.nyc.gov/site/ccrb/about/about.page> (accessed August 25, 2020).

<sup>265</sup> Eric Umansky and Mollie Simon, "The NYPD is Withholding Evidence From Investigations Into Police Abuse," *ProPublica*, August 17, 2020, <https://www.propublica.org/article/the-nypd-is-withholding-evidence-from-investigations-into-police-abuse> (accessed August 26, 2020); Erin Durkin, "Body cameras aid police misconduct investigations, but CCRB faces hurdles getting footage," *Politico*, February 27, 2020, <https://www.politico.com/states/new-york/albany/story/2020/02/27/body-cameras-aid-police-misconduct-investigations-but-ccrb-faces-hurdles-getting-footage-1263841> (accessed August 26, 2020).

<sup>266</sup> David Cruz, "NYPD's Refusal to Comply with Misconduct Investigations Cost Months of Time and Effort," *Gothamist*, August 6, 2020, <https://gothamist.com/news/nypds-refusal-comply-misconduct-investigations-cost-months-time-and-effort> (accessed August 26, 2020).

<sup>267</sup> Eileen Grench and Reuven Blau, "Police Say They'll Refuse to Submit to Video Interviews for Misconduct Investigations," *The City*, June 11, 2020, <https://www.thecity.nyc/justice/2020/6/11/21288820/police-say-theyll-refuse-to-submit-to-video-interviews-for-ccrb-investigations> (accessed August 26, 2020).

fear retaliation.<sup>268</sup> Not only is this time-consuming and draining, but victims' only compensation for this process is the hope that the officer will be held accountable.

As with IAB disciplinary procedures, when the CCRB's investigation substantiates that misconduct occurred, their Administrative Prosecution Unit (APU) must then bring the case through the NYPD administrative trial process. Finally, at the end of this process, the judge can only make recommendations to the NYPD Commissioner, which are often diluted or ignored.<sup>269</sup>

A review of the CCRB found that in 2018 they received around 4,700 complaints.<sup>270</sup> The board was only able to investigate 1,208 of those cases fully, which took on average 211 days.<sup>271</sup> Out of those 1,208 cases, only 326 were substantiated and 73 went through an administrative trial.<sup>272</sup> The police commissioner agreed with the recommendations and brought charges against the officers only 17 times.<sup>273</sup>

Until very recently, the department and its officers were shielded from any outside scrutiny about these cases because all CCRB and IAB complaints, investigations, and findings were considered confidential under New York state law.<sup>274</sup> After years of campaigning by activists, and as a result of the George Floyd protests, the New York legislature repealed the law, Civil Rights Law section 50-A, in June 2020.<sup>275</sup> New York City police unions immediately sued Mayor de Blasio and the CCRB to prevent them from disclosing the records.<sup>276</sup>

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<sup>268</sup> David Cruz, "Why The Majority of NYPD Misconduct Complaints End Up 'Unsubstantiated,'" *Gothamist*, August 18, 2020, <https://gothamist.com/news/why-the-majority-of-nypd-misconduct-complaints-end-up-unsubstantiated> (accessed August 26, 2020).

<sup>269</sup> Police Punishment: CCRB vs. NYPD, <https://project.wnyc.org/ccrb/> (accessed August 25, 2020).

<sup>270</sup> Gersh Kuntzman, "Mayor to Streetsblog: No, I Have Not Fired Any Bad Cops Yet," NYC StreetsBlog, July 2, 2020, <https://nyc.streetsblog.org/2020/07/02/mayor-to-streetsblog-no-i-have-not-fired-any-bad-cops-yet/> (accessed August 26, 2020).

<sup>271</sup> Ibid.; New York City CCRB, "Annual Report 2018," 2018, [https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy\\_pdf/annual\\_bi-annual/2018CCRB\\_AnnualReport.pdf](https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2018CCRB_AnnualReport.pdf) (accessed August 26, 2020).

<sup>272</sup> Ibid.

<sup>273</sup> Ibid.

<sup>274</sup> Julie Ciccolini, "New York State Passes Historic Police Transparency Bill," Human Rights Watch news release, June 10, 2020, <https://www.hrw.org/news/2020/06/10/new-york-state-passes-historic-police-transparency-bill> (accessed August 24, 2020).

<sup>275</sup> Ibid.

<sup>276</sup> Litigation is ongoing. David Cruz, "Police and Fire Unions Sue To Block Disciplinary Records From the Public," *Gothamist*, July 16, 2020, <https://gothamist.com/news/police-and-fire-unions-sue-block-disciplinary-records-public> (accessed August 25, 2020).

Two other bodies are also tasked with oversight: The Office of the Inspector General for the NYPD and the Office of the Attorney General for New York State. The former is a city agency created in 2013 that is responsible for studying and auditing the department. The latter can conduct investigations into allegations of police misconduct, as it has done for the police response to the George Floyd protests, including the June 4 Mott Haven protest.<sup>277</sup> As with the other oversight bodies, however, these offices can only make recommendations to the NYPD, which the police commissioner can choose to ignore.

Taken together, these mechanisms for police oversight have demonstrably failed to monitor police conduct independently or to hold abusive police officers to account.

## Police Protections

### *Constraints with Civil Lawsuits*

The only avenue for individuals harmed by police to get compensation and punitive damages is by filing a civil claim. Most, if not all, municipalities will pay any damages so the judgment does not directly impact officers and ultimately comes from taxpayers.<sup>278</sup>

Even in cases in which a police officer is proven to have violated a constitutional right, under the federal doctrine of qualified immunity, officers are not personally liable for civil lawsuits if the judge can point to any factual difference in the current case from previously established case law.<sup>279</sup> This doctrine allows judges who are hostile to claims against police to find often insignificant seeming distinctions from prior cases to justify dismissing lawsuits. In 2018, the United States Supreme Court upheld dismissal of a case based on qualified immunity when the officers shot a person who was on the opposite side of a fence from them holding a knife at her side while standing six feet away from a person who was telling the police to be calm—because these precise facts had not been decided before in another case.<sup>280</sup> The Supreme Court recently declined to consider several cases

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<sup>277</sup> Local Laws of The City of New York, 2013, No 70, <https://www1.nyc.gov/assets/doi/oignypd/local-law/Local-Law-70.pdf> (accessed August 26, 2020); Police Punishment: CCRB vs. NYPD, <https://project.wnyc.org/ccrb/> (accessed August 25, 2020).

<sup>278</sup> Brentin Mock, “How Cities Offload the Cost of Police Brutality,” *City Lab*, June 4, 2020, <https://www.citylab.com/equity/2020/06/police-brutality-lawsuits-cities-settlements-credit-ratings/612301/> (accessed August 24, 2020).

<sup>279</sup> Cornell Law School Legal Information Institute, “Qualified Immunity,” [https://www.law.cornell.edu/wex/qualified\\_immunity](https://www.law.cornell.edu/wex/qualified_immunity) (accessed August 24, 2020).

<sup>280</sup> *Kiesla v. Hughes*, 138 S.Ct. 1148 (2018) [https://www.supremecourt.gov/opinions/17pdf/17-467\\_bqm1.pdf](https://www.supremecourt.gov/opinions/17pdf/17-467_bqm1.pdf) (accessed August 24, 2020).

seeking to overturn aspects of qualified immunity, but there are proposals in the US Congress to strike down the doctrine through legislation.<sup>281</sup>

Even if an officer whose actions result in meritorious lawsuits is not held fiscally liable, the police department could still take it upon themselves to discipline them. In practice this does not necessarily happen, at least not with the NYPD.<sup>282</sup> While reforms have been made to force New York City to at least account for lawsuits against the police department, they do not seem to have made a difference in disciplining officers.<sup>283</sup> NYPD officer Abdiel Anderson, for example, has been sued over 40 times in 14 years, with at least 30 cases involving allegations of excessive force.<sup>284</sup> Detectives Jodi Brown, James Rivera, and Carlos Marchena each have had enough lawsuits to cost the city over \$1.25 million in settlements.<sup>285</sup> All of these officers are still active on the force.<sup>286</sup>

If individuals wish to change future behavior rather than simply obtain compensation for past misconduct, they could also seek to obtain injunctive relief—that is, an order directing the city to enact new policies or change its practices. These cases, however, also pose significant legal challenges. Courts have held that a plaintiff must also show a likelihood of future injury or a credible threat of future harm and the existence of an official policy.<sup>287</sup>

Individuals could also attempt to secure damages from a municipality for the unconstitutional conduct of its police officers, but there are also formidable challenges here to meaningful accountability. To succeed on such claims against New York City itself (or other municipalities), it has to be proven that police officers acted pursuant to a

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<sup>281</sup> Josh Gerstein, “Supreme Court turns down cases on ‘qualified immunity’ for police,” *Politico*, June 15, 2020, <https://www.politico.com/news/2020/06/15/supreme-court-qualified-immunity-police-cases-320187>; United States Congress, “Ending Qualified Immunity Act,” [https://pressley.house.gov/sites/pressley.house.gov/files/Ending%20Qualified%20Immunity%20Act\\_o.pdf](https://pressley.house.gov/sites/pressley.house.gov/files/Ending%20Qualified%20Immunity%20Act_o.pdf) (accessed August 6, 2020).

<sup>282</sup> Joanna C. Schwartz, “What Police Learn from Lawsuits,” *Cardozo Law Review* 33 (2012): 841, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1640855](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1640855) (accessed August 6, 2020), p. 844.

<sup>283</sup> Administrative Law 7-114

<sup>284</sup> Jake Offenhartz, “Here Are NYC’s Most Sued Cops Who Are Still On The Job, According to New Public Database,” *Gothamist*, March 7, 2020, <https://gothamist.com/news/here-are-nycs-most-sued-cops-who-are-still-on-the-job-according-to-new-public-database> (accessed August 26, 2020).

<sup>285</sup> Ibid.

<sup>286</sup> See New York City Open Data, “Citywide Payroll Data (Fiscal Year),” <https://data.cityofnewyork.us/City-Government/Citywide-Payroll-Data-Fiscal-Year-/k397-673e/data> (accessed August 24, 2020).

<sup>287</sup> *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983); *Shain v. Ellison*, 356 F.3d 211, 212, 216 (2d Cir. 2004).

governmental custom, policy, ordinance, regulation, or decision.<sup>288</sup> The difficulty of showing this in an initial complaint is well illustrated by several opinions dismissing complaints before plaintiffs even had the chance to secure discovery (including of documents and depositions) from a municipality. This dynamic has been seen in cases specifically involving kettling and other tactics used against the Mott Haven protesters—even where those allegations were sufficient to sustain claims against individual police officer defendants.<sup>289</sup>

### *Police Unions*

Many of the protections that police officers enjoy are largely due to the collective bargaining agreements negotiated by police unions on behalf of their members. While unions and collective bargaining agreements are important tools for worker empowerment and protection, including in the public sector, they should not be used to shield officers from accountability. Unlike typical labor unions, they are also aggressive and effective in impeding reform and accountability.<sup>290</sup>

The NYPD's five unions have been extremely vocal in defending their officers' misconduct and opposing reforms.<sup>291</sup> Most recently, the unions have sued over a series of reforms enacted by Governor Cuomo in June 2020. Unions blocked the release of police disciplinary records after the repeal of the New York State law that made them confidential.<sup>292</sup> They also sued over the new anti-chokehold law that criminalizes the use of a chokehold; they claim an ordinary police officer wouldn't be able to understand it, despite the maneuver being prohibited in the Patrol Guide since 1993.<sup>293</sup> The unions have

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<sup>288</sup> *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978). At times, a victim may prove alternatively that the municipality was deliberately indifferent to the possibility of constitutional violations. *Vann v. City of New York*, 72 F.3d 1040, 1049 (2d Cir. 1995).

<sup>289</sup> See, for example, *Laird v. City of Saint Louis*, No. 4:18-cv-01567-AGF, 2019 U.S. Dist. LEXIS 107734, at \*16 (E.D. Mo. June 27, 2019). (Dismissing claim against city where plaintiffs included “no factual allegations in support of this claim other than the conclusion that the city has inadequately trained, supervised, and disciplined SLMPD officers, with respect to its officers’ use of kettling and use of force”).

<sup>290</sup> William Finnegan, “How Police Unions Fight Reform” *New Yorker*, July 27, 2020, <https://www.newyorker.com/magazine/2020/08/03/how-police-unions-fight-reform> (accessed August 30, 2020).

<sup>291</sup> The NYPD has five different unions separated by ranks: Police Benevolent Association, Detectives’ Endowment Association, Sergeants’ Benevolent Association, Lieutenants Benevolent Association, and Captains’ Endowment Association.

<sup>292</sup> Litigation is ongoing. David Cruz, “Police and Fire Unions Sue To Block Disciplinary Records From the Public,” *Gothamist*, July 16, 2020, <https://gothamist.com/news/police-and-fire-unions-sue-block-disciplinary-records-public> (accessed August 25, 2020).

<sup>293</sup> Molly Crane-Newman, “NYPD unions sue NYC over anti-chokehold law, claim ‘ordinary police officer’ is unable to understand it,” *New York Daily News*, August 6, 2020, <https://www.nydailynews.com/new-york/manhattan/ny-chokehold-ban-police-union-sue-20200806-l3jffrvccbfxfcoaxbhbfsebe-story.html> (accessed August 31, 2020).

previously sued to block the release of body camera footage.<sup>294</sup> They are also currently suing to get Daniel Pantaleo reinstated after he was fired in 2019 by the NYPD Commissioner for the killing of Eric Garner in 2014.<sup>295</sup>

The unions have also been unabashed in sharing divisive rhetoric that defends police at all costs. The Twitter accounts of two powerful unions in New York, the Police Benevolent Association of the City of New York and the Sergeants Benevolent Association (SBA), have made headlines multiple times for their posts on Twitter.<sup>296</sup> Even Mayor de Blasio was quoted saying, “The SBA leadership has engaged in racist activities so many times, I can’t even count.”<sup>297</sup> The head of the SBA, Ed Mullins, is currently under investigation by the IAB for declaring “war” on the mayor in one tweet.<sup>298</sup>

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<sup>294</sup> Ashley Southall, “New York Police Union Sues to Stop Release of Body Camera Videos,” *New York Times*, January 9, 2018, <https://www.nytimes.com/2018/01/09/nyregion/new-york-police-union-body-camera-lawsuit.html> (accessed August 31, 2020).

<sup>295</sup> William Finnegan, “How Police Unions Fight Reform” *New Yorker*, July 27, 2020, <https://www.newyorker.com/magazine/2020/08/03/how-police-unions-fight-reform> (accessed August 30, 2020).

<sup>296</sup> Jake Offenhartz, “NYPD Police Union Boss: Sorry For Sharing Racist Video, ‘I Have Black Friends,’” *Gothamist*, August 14, 2019, <https://gothamist.com/news/nypd-police-union-boss-sorry-for-sharing-racist-video-i-have-black-friends> (accessed August 31, 2020).

<sup>297</sup> Shant Shahrigan, “NYC Mayor de Blasio slams SBA and PBA’s police union leadership for ‘racist’ activities,” *New York Daily News*, June 16, 2020, <https://www.nydailynews.com/news/politics/ny-police-unions-bill-de-blasio-sba-pba-20200616-2lbnfohskzbxfn3iljtc4myjda-story.html> (accessed August 31, 2020).

<sup>298</sup> Anna Sanders, Rocco Parascandola and Graham Rayman, “NYPD investigating outspoken union president Ed Mullins for ‘war’ comment,” *New York Daily News*, February 21, 2020, <https://www.nydailynews.com/new-york/nyc-crime/ny-sergeant-union-head-investigation-20200221-op2vara2rffqlog4kz2d5jhbty-story.html> (accessed August 31, 2020).



## VI. Applicable Legal Standards

The police conduct during the Mott Haven protest on June 4, 2020, documented in this report, amounts to serious violations of international human rights law. The conduct also appears to violate civil rights protections under the United States Constitution and provisions of the New York Police Department (NYPD) Patrol Guide.

### International Human Rights Law

The International Covenant on Civil and Political Rights (ICCPR), to which the US is a party, protects the rights to freedom of expression and peaceful assembly.<sup>299</sup> The covenant applies to federal, state, and local governments.<sup>300</sup> Law enforcement personnel are obligated to protect and uphold those fundamental rights. The police action in Mott Haven on June 4 violated these rights: law enforcement officers trapped, beat, pepper sprayed, and arrested protesters and others who were peacefully exercising these fundamental rights. In addition, New York City's 8 p.m. curfew may have violated rights to free expression and peaceful assembly.

The United Nations Human Rights Committee, an international expert body that monitors compliance with the ICCPR, issued a general comment in July 2020 on the right to peaceful assembly.”<sup>301</sup>

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<sup>299</sup> International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>. The US ratified the ICCPR in YEAR.

<sup>299</sup> Article 19 states that:

Everyone shall have the right to hold opinions without interference. 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice. 3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order, or of public health or morals.

ICCPR article 21 provides that:

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

<sup>300</sup> ICCPR, art. 50.

<sup>301</sup> “UN Human Rights Committee publishes interpretation on the right of peaceful assembly,” UN OHCHR press release, July 29, 2020, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26133&LangID=E> (accessed August 25, 2020).

Restrictions on the right to peaceful assembly must be “provided by law” and be a proportionate response to the situation. The committee stated that, “The laws in question must be sufficiently precise to allow members of society to decide how to regulate their conduct and may not confer unfettered or sweeping discretion on those charged with their enforcement.”<sup>302</sup>

The possibility of a violent assembly is an insufficient basis to stop the demonstration:

An unspecified risk of violence, or the mere possibility that the authorities will not have the capacity to prevent or neutralize the violence emanating from those opposed to the assembly, is not enough; the State must be able to show, based on a concrete risk assessment, that it would not be able to contain the situation, even if significant law enforcement capability were to be deployed.<sup>303</sup>

The Committee stated that, “The prohibition of a specific assembly can be considered only as a measure of last resort”:

Where the imposition of restrictions on an assembly is deemed necessary, the authorities should first seek to apply the least-intrusive measures. States should also consider allowing an assembly to take place and deciding afterwards whether measures should be taken regarding possible transgressions during the event, rather than imposing prior restraints in an attempt to eliminate all risks.<sup>304</sup>

The police action against the Mott Haven demonstration was not the “least intrusive” response. In addition, the 8 p.m. citywide curfew appeared overly restrictive given that the looting that the curfew attempted to curtail had previously been restricted to certain geographic areas and involved a relatively small number of individuals.

Under the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Personnel, law enforcement officials should make use of non-violent means before resorting to force and avoid the use of force to disperse non-violent protests, regardless of whether the authorities deem the protests illegal. Any use of force by law enforcement

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<sup>302</sup> HRC GC 37, para. 39.

<sup>303</sup> Ibid., para. 52.

<sup>304</sup> Ibid, 37.

must be preceded by clear warnings and should only be used if other measures to address a genuine threat have proved ineffective or have no likelihood of achieving the intended result. When using force, law enforcement should exercise restraint and act proportionately, taking into account both the seriousness of the offense and the legitimate objective to be achieved. During the Mott Haven protest, police violated the right to peaceful assembly by resorting to unnecessary and excessive use of force against demonstrators, legal observers, medics, and bystanders – without warning, provocation, or giving people an opportunity to disperse.

The Human Rights Committee, in its general comment, has criticized the practice of “kettling” as used by the police in Mott Haven:

Containment (“kettling”), where law enforcement officials encircle and close in a section of the participants, may be used only where it is necessary and proportionate to do so, in order to address actual violence or an imminent threat emanating from that section. Necessary law enforcement measures targeted against specific individuals are often preferable to containment. Particular care must be taken to contain, as far as possible, only people linked directly to violence and to limit the duration of the containment to the minimum necessary. Where containment is used indiscriminately or punitively, it violates the right of peaceful assembly, and may also violate other rights such as freedom from arbitrary detention and freedom of movement.<sup>305</sup>

The mass arrests of the protesters on the basis that they were violating the curfew appears arbitrary in violation of article 9 of the ICCPR.<sup>306</sup> Beyond the lawfulness of an 8 p.m. citywide curfew, the facts of the Mott Haven crackdown indicate that the authorities had effectively detained the peaceful protesters en masse before the curfew took effect and provided them no opportunity to disperse. As the Human Rights Committee has stated, “Only in exceptional cases may an assembly be dispersed. Dispersal may be resorted to if the assembly as such is no longer peaceful, or if there is clear evidence of an imminent threat of serious violence that cannot be reasonably addressed by more proportionate

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<sup>305</sup> Ibid., para. 84.

<sup>306</sup> ICCPR, art. 9 (“No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.”)

measures such as targeted arrests. In all cases, the law enforcement rules on use of force must be strictly followed.”<sup>307</sup>

Besides arresting protesters who were demonstrating peacefully, the police also detained legal observers and essential workers who were exempt from the city’s curfew. Many of those detained said they were not informed of the reason for their arrest or the charges against them as required by article 9.

Police action against legal observers was contrary to international standards protecting individuals involved in human rights activities. The UN Declaration on Human Rights Defenders upholds the rights of human rights defenders “to conduct human rights work” and “to effective protection under national law in reacting against or opposing, through peaceful means, acts or omissions attributable to the State that result in violations of human rights.”<sup>308</sup> While not legally binding on states, the declaration was adopted by consensus by the UN General Assembly and is a widely accepted standard.

Police prevented demonstrators in their custody during the Mott Haven protest from obtaining urgent medical care from street medics – medical professionals and lay people with first aid training – in violation of their right to health. These street medics help protesters cope with the effects of teargas and pepper spray, and with broken limbs and other injuries that people suffer when police break up demonstrations. Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which the US has signed but not ratified, recognizes the right of everyone to the enjoyment of the highest attainable standard of health.<sup>309</sup> Governments have an obligation to respect the right to health by ensuring those needing care are able to access health services.<sup>310</sup>

The ICCPR and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which the US is party, ban “cruel, inhuman or degrading

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<sup>307</sup> HRC GC para. 85.

<sup>308</sup> UN Declaration on Human Rights Defenders, adopted March 8, 1999 General Assembly resolution 53/144, U.N. Doc A/RES/144, <https://www.ohchr.org/en/issues/srhdefenders/pages/declaration.aspx> (accessed August 28, 2020).

<sup>309</sup> International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx> (accessed August 28, 2020). The United States signed the ICESCR on DATE.

<sup>310</sup> UN Committee on ESC Rights, General Comment No. 14: The Right to the Highest Attainable Standard of Health (Art. 12), para. 50.

treatment or punishment.”<sup>311</sup> The police treatment of some protesters, legal observers, medics, and bystanders during the Mott Haven protest, and their subsequent detention, may have violated this prohibition.

Moreover, unnecessarily detaining people in cramped conditions amidst the Covid-19 pandemic presented serious public health risks that might have violated detainees’ right to health. This occurred first in Mott Haven during the kettling, as detainees waited, crowded together on the ground or in vans, for processing, and as they were held in crowded cells, without access to personal protective equipment (PPE).

Because of the heightened risk of Covid-19 for detainees and jail staff, authorities should only impose custodial arrests when strictly necessary.<sup>312</sup> Given that those arrested during the Mott Haven protest were not engaged in violence and presented no immediate threat to the public, there was no justification for custodial arrests. If detention is necessary, authorities should follow the health protocols established in the Centers for Disease Control and Prevention (CDC) Guidelines to reduce the risk of Covid-19 transmission.<sup>313</sup>

Finally, international human rights law provides victims of human rights violations a right to a remedy.<sup>314</sup> Under article 2 of the ICCPR, “any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.”<sup>315</sup> The Human Rights Committee, in its general comment on the legal obligations of states under the ICCPR, has stated that governments “must ensure that individuals also have accessible and effective remedies to vindicate those rights.”<sup>316</sup> In addition, “[a]dministrative mechanisms are particularly required to give effect to the general obligation to investigate

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<sup>311</sup> Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), *entered into force* June 26, 1987. The United States ratified the convention on October 21, 1994.

<sup>312</sup> Ida Sawyer, “New York Protesters Jailed in Crowded, Filthy Conditions,” Human Rights Watch commentary, <https://www.hrw.org/news/2020/06/09/new-york-protesters-jailed-crowded-filthy-conditions> (accessed August 28, 2020).

<sup>313</sup> “Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities,” Center for Disease Control, July 22, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html> (accessed September 22, 2020).

<sup>314</sup> See Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, G.A. Res. 60/147, U.N. Doc A/RES/60/147 (Dec. 16, 2005).

<sup>315</sup> ICCPR, art. 2(3).

<sup>316</sup> HRC, GC31, para. 15.

allegations of violations promptly, thoroughly and effectively through independent and impartial bodies.”<sup>317</sup>

## Constitutional Civil Rights Protections

The US Constitution governs interactions between law enforcement and members of the public, including protesters. The police action during the Mott Haven protest may amount to violations of the First, Fourth, and Fourteenth Amendments to the constitution in retaliation against the protesters for exercising their rights to free speech and assembly, the use of excessive force, and violations of protesters’ due process rights.<sup>318</sup> To remedy those violations, protesters could bring claims for money damages under 42 US Code, section 1983, a federal statute designed to provide an avenue for vindication of constitutional rights.<sup>319</sup>

In each of these claims, the following individuals could be found responsible for violations: on-duty officers who carried out the action; officers nearby who were aware of violations of the protesters’ constitutional rights by other officers, had an opportunity to intervene to prevent the violations while acting under color of state law, and chose not to do so, which, in turn, resulted in injuries; and commanding officers who created or allowed the continuance of NYPD policies that violated the protesters’ constitutional rights and, after being informed of the violation, failed to remedy the wrong, while acting in a law enforcement capacity, exhibiting deliberate indifference to the protesters’ rights, and proximately causing injuries. The City of New York could also be responsible for violating protections for maintaining a policy, custom, or usage of unconstitutional actions, which would require showing that the policy, custom, or usage was a motivating force behind the violations of the protesters’ constitutional rights and that it proximately caused the protesters’ injuries.

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<sup>317</sup> HRC, GC31, para. 15.

<sup>318</sup> Rights guaranteed by the First and Fourth Amendments are incorporated through the Fourteenth Amendment, meaning that they are “enforceable against the states” and against those acting under color of state law “in the same manner and to like effect as other basic [constitutional] rights.” *Mapp v. Ohio*, 367 U.S. 643, 660 (1961). The Fourteenth Amendment’s Due Process Clause also directly provides certain protections against improper conduct by state officials, as we discuss below. *DiPalma v. Phelan*, 81 N.Y.2d 754, 756 (1992).

<sup>319</sup> *Am. Mfrs. Mut. Ins. Co. v. Sullivan*, 526 U.S. 40, 49–50 (1999) (“To state a claim for relief in an action brought under 42 U.S.C. § 1983, respondents must establish that they were deprived of a right secured by the Constitution or laws of the United States, and that the alleged deprivation was committed under color of state law.”).

## First Amendment

The First Amendment prohibits government agents from retaliating against people for voicing opinions, protecting their freedom of speech and of assembly.<sup>320</sup> In a landmark case, *Texas v. Johnson*, the US Supreme Court stated that “If there is a bedrock principle underlying the First Amendment, it is that the government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable.”<sup>321</sup> In many cases, this principle has been applied to police interference in peaceful protests.<sup>322</sup>

For example, a New York district court in 2016 found allegations that officers’ arrest, without probable cause, of protesters present in Zuccotti Park to celebrate the six-month

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<sup>320</sup> *Hartman v. Moore*, 547 U.S. 250, 256 (2006)); see also, *Virginia v. Black*, 538 U.S. 343, 358 (2003) (collecting cases) (recognizing that this protection extends to symbolic or expressive conduct as well).

<sup>321</sup> *Texas v. Johnson*, 491 U.S. 397, 414 (1989).

<sup>322</sup> After all, “[t]he hallmark of the protection of free speech is to allow ‘free trade in ideas’—even ideas that the overwhelming majority of people might find distasteful or discomforting.” *Black*, 538 U.S. at 358 (quoting *Abrams v. United States*, 250 U.S. 616, 630 (1919) (Holmes, J., dissenting)). “The Supreme Court has declared that the First Amendment protects political demonstrations and protests—activities at the heart of what the Bill of Rights was designed to safeguard. . . . Indeed, the Court has repeatedly held that police may not interfere with orderly, nonviolent protests merely because they disagree with the content of the speech or because they simply fear possible disorder.” *Papineau v. Parmley*, 465 F.3d 46, 56 (2d Cir. 2006).

Prior to January 26, 2007, a “parade or procession” was defined by section 19-02 of the Rules of the City of New York (R.C.N.Y.) to include “any march, motorcade, caravan, promenade, foot or bicycle race, or similar event of any kind, upon any public street or roadway.” In 2006, subsequent to mass parading without permit arrests during the 2004 Republican National Convention, the City began the process of amending its administrative definition of “parade,” resulting in the amendment, effective February 25, 2007, of 38 RCNY § 19-02 to define a “parade” as “any procession or race which consists of a recognizable group of 50 or more pedestrians, vehicles, bicycles or other devices moved by human power, or ridden or herded animals proceeding together upon any public street or roadway.”

In applying the amended definition, a New York federal district court weighed “freedom of expressive association,” which involves the “right to associate for the purpose of engaging in those activities protected by the First Amendment – speech, assembly, petition for the redress of grievances, and the exercise of religion.” *Five Borough Bicycle Club v. City of N.Y.*, 483 F. Supp. 2d 351, 364-65 (S.D.N.Y. 2007). The court determined that “not all burdens on the right are of constitutional dimension. ‘[T]he government may engage in some conduct that incidentally inhibits protected forms of association. Though such inhibiting conduct might make it more difficult for individuals to exercise their freedom of association, this consequence does not, without more, result in a violation of the First Amendment. To be cognizable, the interference with associational rights must be ‘direct and substantial’ or ‘significant.’ Second, if a regulation places a constitutionally cognizable burden on the right of association, it nevertheless will be upheld if it was ‘adopted to serve compelling state interests, unrelated to the suppression of ideas, that cannot be achieved through means significantly less restrictive of associational freedoms.’” The court also distinguished the case from *N.A.A.C.P. v. Claiborne Hardware Co.*, 458 U.S. 886, 911, 102 S. Ct. 3409, 3425, 73 L. Ed. 2d 1215 (1982). In *Claiborne*, a boycott of white merchants in Claiborne County, Mississippi, was launched at a meeting of a local branch of the National Association for the Advancement of Colored People (NAACP) attended by several hundred Black persons. The purpose of the boycott was to secure compliance by both civic and business leaders with a lengthy list of demands for equality and racial justice. The boycott was largely supported by speeches encouraging nonparticipants to join the common cause and by nonviolent picketing, but some acts and threats of violence did occur. The Supreme Court in *Claiborne* held that a “boycott clearly involved constitutionally protected activity. The established elements of speech, assembly, association, and petition, “though not identical, are inseparable” [t]hrough exercise of [ ] First Amendment rights, petitioners sought to bring about political, social, and economic change” and that “the nonviolent elements of petitioners’ activities are entitled to the protection of the First Amendment.”

anniversary of the Occupy Wall Street protests, were sufficient to state a claim for retaliation.<sup>323</sup>

Within this framework, if law enforcement officers took adverse action against protesters for engaging in protected First Amendment activity, proximately causing them injury, they would be violating the protesters' First Amendment rights.

While police officers may assert that the curfew justified their action, even if they blocked people before the curfew and refused to let them disperse, the curfew itself may have been an overly broad restriction on First Amendment protections. On June 5, 2020, the New York Civil Liberties Union, the Legal Aid Society, the Thurgood Marshall Civil Rights Center, and the Center for Constitutional Rights threatened to bring a lawsuit against Mayor de Blasio if he extended New York City's curfew. The groups said in a joint statement:

The curfew...has effectively prohibited New Yorkers from safely being outside between the hours of 8 p.m. ... In addition to curtailing the right to First Amendment protected protest, the NYPD has used the curfew as justification for their brutal attacks. We have seen too many demonstrators, journalists, lawmakers, protest monitors, essential workers, and bystanders who have been callously beaten, threatened, and unlawfully arrested, all under the guise of enforcing the curfew.<sup>324</sup>

Other individuals and groups also threatened or filed lawsuits, making similar claims about the curfew violating First Amendment protections.<sup>325</sup>

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<sup>323</sup> *Marom v. City of New York*, 15-cv-2017, 2016 U.S. Dist. LEXIS 28466, at \*36–37 (S.D.N.Y. Mar. 7, 2016).

<sup>324</sup> "Civil Rights Organizations Threaten to Sue If De Blasio Extends Curfew," ACLU press release, June 5, 2020, <https://www.aclu.org/press-releases/civil-rights-organizations-threaten-sue-if-de-blasio-extends-curfew> (accessed September 1, 2020).

<sup>325</sup> Julia Marsh, "Advocacy groups threaten to sue NYC if curfew isn't lifted immediately," *New York Post*, June 5, 2020, <https://nypost.com/2020/06/05/advocacy-groups-threaten-to-sue-nyc-if-curfew-isnt-lifted-immediately/> (accessed August 31, 2020); Ali Tufan Koc and Daniel Maurer, "As More Protesters Are Arrested, NYCLU and Others Threaten to Sue Over Curfew," June 6, 2020, <https://bedfordandbowery.com/2020/06/as-more-protesters-are-arrested-nyclu-and-others-threaten-to-sue-over-curfew/> (accessed August 31, 2020). See also, *Jeffery v. City of New York* (court document 1:20-cv-02843); Eastern District of New York, <https://clearinghouse.net/detail.php?id=17626&search=source%7Cgeneral%3BspecialCollection%7C63%3BBorderby%7CfilingYear%3B> (accessed September 1, 2020).



## Fourth Amendment

The Fourth Amendment applies to “seizures” by government and law enforcement agents prior to arrest and prohibits the use of excessive force in connection with a seizure.<sup>326</sup> These principles are illustrated in key court cases. For example, the US Court of Appeals for the Second Circuit held that allegations of officers’ physical assault—including beatings with riot batons, hair-dragging, kicking, punching, and choking—“without provocation” on non-violent, peaceful protesters were sufficient to allow for a finding that excessive force was used.<sup>327</sup> The same court likewise found allegations of officers’ use of “pain compliance techniques” in the process of making an arrest—including “pressing [the arrestees’] wrists back against their forearms in a way that caused lasting damage,” and “placing a knee on [an arrestee’s] neck in order to tighten [his] handcuffs while he was lying face-down”—sufficient to reach a jury for determination.<sup>328</sup> Notably, liability for the excessive force violation can be connected not only to the officers who directly applied excessive force, but also to an “officer who fails to intercede in the use of excessive force or another constitutional violation.”<sup>329</sup>

In a 2020 case that exhibits some similarities to the Mott Haven protests, the court denied a motion to dismiss allegations that officers used pepper spray against a crowd of

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<sup>326</sup> See *Tennessee v. Garner*, 471 U.S. 1 (1985); see also, *Graham v. Connor*, 490 U.S. 386, 395 (1989). A “seizure” occurs when a “reasonable person” in the subject’s position would feel he or she is not free to end an encounter with government agents. See, for example, *Kaupp v. Texas*, 538 U.S. 626, 123 S. Ct. 1843, 1846–47 (2003) (per curiam). The following factors are applied to determine whether a “seizure” has occurred: “[T]he threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer’s request might be compelled.” *United States v. Mendenhall*, 446 U.S. 544, 554 (1980). *Papineau v. Parmley*, 465 F.3d 46, 63 (2d Cir. 2006). *Graham*, 490 U.S. at 396. “[A]s the cases clearly establish, the state may not perpetrate violence for its own sake. Force without reason is unreasonable.” *Johnson v. District of Columbia*, 528 F.3d 969, 977 (D.C. Cir. 2008). “[A] police officer must have some justification for the quantum of force he uses.” Put differently, force must be “undertaken in pursuit of a legitimate end.” *Ibid.* at 976.

<sup>327</sup> This is the federal appellate court that hears appeals from New York federal district courts, which would have jurisdiction in the first instance over federal constitutional claims arising from conduct within New York. Our legal analysis therefore focuses primarily on the law of the Second Circuit (and the US Supreme Court), although we do refer to cases from other jurisdictions with facts analogous to those at issue here.

<sup>328</sup> *Amnesty Am. v. Town of W. Hartford*, 361 F.3d 113, 123 (2d Cir. 2004).

<sup>329</sup> *Terebesi v. Torres*, 764 F.3d 217, 243 (2d Cir. 2014). In *Johnson*, the DC Circuit likewise “had no trouble finding” that unreasonable force was used where an officer repeatedly kicked a surrendering suspect in the groin. 578 F.3d at 977. The court reasoned that “striking the groin is the classic example of fighting dirty,” emphasizing that “[f]rom the schoolyard scrapper to the champion prizefighter, no pugilist takes lightly the threat of a hit below the belt.” (“What’s more, [an officer-defendant] supposedly kicked a man while he was down”). The court further evaluated whether this specific conduct “produce[d] some law enforcement benefit that might outweigh the serious harm it causes.” The court concluded it did not, reasoning that while “[a]n officer in [the actor’s] position has a legitimate and substantial interest in apprehending an armed suspect and protecting himself and the public from possible harm, it was “not clear how kicking [the suspect] in the groin furthered either of them.”

protesters that “was not violent, largely compliant, and unable to flee because of the use of kettling.”<sup>330</sup>

### *Fourteenth Amendment*

The Fourteenth Amendment guarantees equal protection of the laws and explicitly states that no individual shall be denied “life, liberty, or property without due process of law.” The scope of this protection applies to the protest context.<sup>331</sup> On a due process claim, the key question is whether police conduct is “so egregious, so outrageous that it may fairly be said to shock the contemporary conscience.”<sup>332</sup> Recently, courts have emphasized that officers’ use of “an objectively unreasonable degree of force is conscience shocking.”<sup>333</sup>

For example, the Second Circuit determined that allegations of officers’ purposeful use of a long-range acoustic device “in a manner capable of causing serious injury to move non-violent protestors to the sidewalks violated [the] law” and sufficiently stated a Fourteenth Amendment due process claim based on the use of excessive force.<sup>334</sup> Furthermore, a district court concluded that, “while minor pushes or shoves may not meet the conscience-shocking test,” “an unprovoked physical attack by a police officer on a public street involving an amount of force that results in the alleged target of the attack being thrown to the ground, with concomitant substantial immediate pain as well as lingering ill effects, is sufficient for a reasonable jury to conclude that a Fifth Amendment violation occurred.”<sup>335</sup>

Under this framework, if an on-duty law enforcement officer uses objectively unreasonable force against protesters, proximately causing injury, the officer violates the protesters’ Fourteenth Amendment rights.

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<sup>330</sup> *Baude v. City of St. Louis*, No. 4:18-CV-1564-RWS, 2020 U.S. Dist. LEXIS 139770, at \*23 (E.D. Mo. Aug. 4, 2020).

<sup>331</sup> More specifically, the Fourteenth Amendment’s Due Process Clause applies to conduct by state or local officers. The Fifth Amendment provides analogous protection with respect to conduct by federal officers and also provides certain other protections to pretrial detainees. This analysis focuses on the Fourteenth Amendment’s Due Process Clause because that provision bears most directly on the conduct of NYPD officers.

<sup>332</sup> *City of Sacramento v. Lewis*, 523 U.S. 833, 847 n.8 (1998); see also *id.* at 849 (“[C]onduct intended to injure in some way unjustifiable by any government interest is the sort of official action most likely to rise to the conscience-shocking level.”). In this analysis, there is nothing particularly unique about interactions between police and protestors. The U.S. Court of Appeals for the Second Circuit has “repeatedly emphasized that officers engaging with protestors must comply with the same principles of proportionality attendant to any other use of force.” *Edrei v. Maguire*, 892 F.3d 525, 541 (2d Cir. 2018).

<sup>333</sup> *Edrei*, 892 F.3d at 536.

<sup>334</sup> *Edrei*, 892 F.3d at 544.

<sup>335</sup> *Moore v. District of Columbia*, 79 F. Supp. 3d 121, 134 (D.D.C. 2015).

## NYPD Patrol Guide

The NYPD Patrol Guide provides guidelines for police use of force, display of shield and badge numbers, and specific protections for legal observers.<sup>336</sup> While there is no private right of action to sue for a violation of the Patrol Guide (as there is for violations of the federal Constitution), violations can serve as the basis for disciplinary measures against officers who engaged in wrongdoing. The New York Attorney General has called on lawmakers to pass into law the rules about the use of force laid out in the Patrol Guide, which could make it easier to prosecute officers who violate them.<sup>337</sup>

According to the NYPD Patrol Guide: “In all circumstances any application or use of force must be reasonable under the circumstances” and “[i]f the force used is unreasonable under the circumstances, it will be deemed excessive in violation of Department policy.” In the excessive force clause of the force guidelines, the Patrol Guide explicitly prohibits “using a chokehold,” “using any level of force to punish, retaliate or coerce a subject to make statements,” and using “any level of force on handcuffed or otherwise restrained subjects unless necessary to prevent injury, escape, or to overcome active physical resistance or assault.” Furthermore, the Patrol Guide outlines the criminal and civil liability witnessing officers assume if they “fail to intervene in the use of excessive force, or report excessive force, or fail to request or to ensure timely medical treatment for an individual.” While the Patrol Guide defines de-escalation and describes its goal to “reduce or eliminate the necessity to use force,” it does not direct officers to engage in de-escalation efforts prior to using force unless doing so is “appropriate and consistent with personal safety.”<sup>338</sup>

The Patrol Guide instructs officers to use Oleoresin Capsicum (OC) pepper spray “to gain or maintain control of persons who are actively resisting arrest or lawful custody or exhibiting active aggression, or to prevent individuals from physically injuring themselves, members of the service, or other persons.”<sup>339</sup> The Patrol Guide explicitly directs officers to “not use O.C. pepper spray on subjects who passively resist (e.g., going limp, offering no active physical resistance).” In cases of managing a large crowd, the guide instructs officers to

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<sup>336</sup> City of New York Police Department, Patrol Guide, “Force Guidelines,” June 1, 2016, [https://www1.nyc.gov/assets/ccrb/downloads/pdf/investigations\\_pdf/pg221-01-force-guidelines.pdf](https://www1.nyc.gov/assets/ccrb/downloads/pdf/investigations_pdf/pg221-01-force-guidelines.pdf) (accessed August 24, 2020).

<sup>337</sup> Ali Watkins, “State Attorney General Calls for Stripping N.Y.P.D Control From Mayor,” *New York Times*, July 8, 2020, <https://www.nytimes.com/2020/07/08/nyregion/letitia-james-nypd-reforms.html> (accessed August 24, 2020).

<sup>338</sup> *Ibid.*

<sup>339</sup> City of New York Police Department, Patrol Guide, “Use of Oleoresin Capsicum Pepper Spray Devices,” June 1, 2016, [https://www1.nyc.gov/assets/ccrb/downloads/pdf/investigations\\_pdf/pg221-07-use-of-pepper-spray-devices.pdf](https://www1.nyc.gov/assets/ccrb/downloads/pdf/investigations_pdf/pg221-07-use-of-pepper-spray-devices.pdf) (accessed August 24, 2020).

“avoid discharging O.C. pepper spray indiscriminately over a large area for disorder control.” If an officer uses pepper spray on an individual, the guide instructs officer to flush the contaminated skin with water until signs of distress decline. If the individual experiences a severe reaction, such as difficulty breathing, the officer should take them to the nearest hospital emergency room.

The Patrol Guide enumerates specific protections for appropriately identified legal observers and unofficial observers. The guide instructs officers to “extend every courtesy and cooperation” to those serving as legal observers, in an official capacity, and grant them free access through police lines at protests and demonstrations.<sup>340</sup>

Barring legitimate threat to personal safety or targeted interference in police activity, any individual has the right to observe, photograph, and record police activity; request and take note of officers names, badge numbers, and shield information; and refuse to leave the area without facing arrest, threats, intimidation, obstruction, or removal or deletion of their recording devices/observation materials by police.<sup>341</sup> The Patrol Guide instructs officers to “courteously and clearly state your rank, name, shield number and command, or otherwise provide them, to anyone who requests you to do so” and, furthermore to “allow the person ample time to note this information.”<sup>342</sup>

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<sup>340</sup> Patrol Guide, § 213-11 of the NYPD patrol guide, [https://www1.nyc.gov/assets/nypd/downloads/pdf/public\\_information/public-pguide1.pdf](https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/public-pguide1.pdf) (accessed August 30, 2020).

<sup>341</sup> According to the Patrol Guide, “an individual CANNOT be arrested for (1) Taking photographs, videotaping, or making a digital recording; (2) Requesting or making notes of shield number or names of members of the service; (3) Criticizing the police or objecting to police activity; (4) Refusing to leave the area; or (5) Using crude or vulgar speech.” Legal observers are subject to arrest if there is a legitimate interference into police action. This includes “actual physical force (touching or physically interfering with the officer or the suspect, i.e., using a camera so close to the officer’s face that it intentionally obstructs his or her view), or intruding into the physical space necessary to safely perform police operations and refusing to obey an order to move back, or purposefully engaging in behavior that prevents an officer from taking enforcement action (i.e., blocking a prisoner van, etc.). See PG § 203-29 and Patrol Guide § 213-11 of the NYPD patrol guide. April 3, 2019, [https://www1.nyc.gov/assets/nypd/downloads/pdf/public\\_information/public-pguide1.pdf](https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/public-pguide1.pdf) (accessed August 30, 2020). New York City chapter of the NLG letter to New York State Attorney General, Letitia James, August 3, 2020.

<sup>342</sup> Patrol Guide, § 203-09 of the NYPD patrol guide, [https://www1.nyc.gov/assets/nypd/downloads/pdf/public\\_information/public-pguide1.pdf](https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/public-pguide1.pdf) (accessed September 10, 2020).

## VII. The Limits of Incremental Reform

Over the past several years – and in recent months, as a response to the mass mobilization following the police killing of George Floyd – some limited reform efforts have been implemented to address police misconduct and improve accountability within the New York Police Department (NYPD). As with similar incremental reforms in police departments across the United States, however, these efforts have failed to change the culture of policing, to address systemic racism, or to improve accountability for police misconduct in a meaningful way. Historically, efforts to reform police tactics have been hard-fought and often ignored by the NYPD, even when codified into law.

A main item on many reform lists is often repairing police-community relations and building trust. Community policing was a key recommendation in President Barack Obama’s Task Force on 21<sup>st</sup> Century Policing.<sup>343</sup> In 2015, the NYPD began a neighborhood policing plan to foster positive police and community relationships and improve communication.<sup>344</sup> The effects of the NYPD Neighborhood Policing plan are still being studied.<sup>345</sup> Yet activists have found that community policing serves to legitimize and expand the role of police in everyday lives, and contributes to a greater police presence and surveillance without solving the underlying social problems that contribute to crime.<sup>346</sup> Where Human Rights Watch has examined “community policing” reforms, we have made similar critiques and observed that they tend to emphasize the public perception of police without changing harmful behaviors.<sup>347</sup>

In 2014, over 200 community groups supported the Right to Know Act, a collection of nine proposed ordinances that were designed to “protect the civil and human rights of New Yorkers in everyday encounters with the NYPD by improving transparency and

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<sup>343</sup> US Department of Justice, President’s Task Force on 21<sup>st</sup> Century Policing, “Final Report on the President’s Task Force on 21<sup>st</sup> Century Policing,” 2015, Office of Community Oriented Policing Services, [https://cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf) (accessed September 1, 2020).

<sup>344</sup> Roshan Abraham and Angely Mercado, “NYPD’s Neighborhood Policing Meetings Aren’t Reaching Intended Audience,” *City Limits*, April 24, 2018, <https://citylimits.org/2018/04/24/nypds-neighborhood-policing-meetings-arent-reaching-intended-audience/> (accessed August 31, 2020).

<sup>345</sup> “What Is the Impact of Neighborhood Policing in New York City?” Rand Corporation, <https://www.rand.org/well-being/justice-policy/projects/neighborhood-policing.html> (accessed August 31, 2020).

<sup>346</sup> The Abolition Research Group, “The Problem With Community Policing,” *A World Without Peace*, October 8, 2017, <https://aworldwithoutpolice.org/2017/10/08/the-problem-with-community-policing/> (accessed August 31, 2020).

<sup>347</sup> *Public Safety in the United States: 14 Recommendations on Policing, Community Investment, and Accountability*, (New York: Human Rights Watch, 2020), <https://www.hrw.org/news/2020/08/12/roadmap-re-imagining-public-safety-united-states>.

accountability.”<sup>348</sup> The Act met stiff opposition by police officers and Mayor de Blasio.<sup>349</sup> Ultimately, the New York City Council passed a watered-down version that consisted of the Consent to Search Law, which requires police to inform civilians that they can refuse a search and one will not happen without their permission, and the NYPD ID Law, which requires officers to identify themselves, explain why they have stopped an individual, and provide a business card if the stop does not result in an arrest or summons.<sup>350</sup>

Body cameras were also a major reform item after the death of Eric Garner and others were caught on civilian cameras. The NYPD began distributing body cameras in 2017, and by August 2019, officers, detectives, sergeants, and lieutenants regularly assigned to perform patrol duties throughout the city were equipped with them.<sup>351</sup> Although the body camera procedure laid out in the NYPD Patrol Guide, effective January 2018, requires officers to activate cameras in multiple instances, Civilian Complaint Review Board (CCRB) reports have confirmed that police routinely fail to follow the policy.<sup>352</sup> Furthermore, “[o]fficers also used non-verbal cues, such as tapping motions, shoulder brushing, and gesturing to indicate whether their cameras were turned on or off,” according to CCRB’s February 2020 report that focused on the impact of police body-worn cameras from May 2017 to June 2019.<sup>353</sup> Some activists also contend that body cameras are ineffective in limiting police misconduct, and that they are instead used as surveillance and propaganda tools, with police releasing or manipulating footage to fit their story.<sup>354</sup>

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<sup>348</sup> “Right to Know Act,” Communities United for Police Reform, 2012, <http://changethenypd.org/RightToKnowAct>.

<sup>349</sup> Michael Gartland, “Cops Livid over Proposed Reform Measures,” *New York Post*, June 29, 2015, <http://nypost.com/2015/06/29/cops-livid-over-proposed-police-reform-measures/> (accessed August 31, 2020).

<sup>350</sup> “Right to Know Act,” Communities United for Police Reform, 2012, <http://changethenypd.org/RightToKnowAct>; “Right to Know Act,” Civilian Complaint Review Board, <https://www1.nyc.gov/site/ccrb/complaints/right-to-know-act.page>

<sup>351</sup> With respect to the 2018 policy says, “Record only if engaged in one of the actions listed in step ‘4’ above (Mandatory Activation of BWC) and in uniform....The Technical Assistance and Response Unit (TARU) remains solely responsible for documenting protests, demonstrations, political events, etc., by means of photos and/or video.” See City of New York Police Department, Body-Worn Cameras page, <https://www1.nyc.gov/site/nypd/about/about-nypd/equipment-tech/body-worn-cameras.page> (accessed August 31, 2020).

<sup>352</sup> Christina Carrega, “Some NYPD officers tip each other off when body cameras are on: watchdog report,” *ABC News*, February 27, 2020, <https://abcnews.go.com/US/nypd-officers-tip-off-body-cameras-watchdog-report/story?id=69254245> (accessed August 31, 2020).

<sup>353</sup> “Strengthening Accountability: The Impact of the NYPD’s Body-Worn Camera Program on CCRB Investigations,” CCRB, February 2020, [https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy\\_pdf/issue\\_based/20200227\\_BWCReport.pdf](https://www1.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/issue_based/20200227_BWCReport.pdf). In June 2020, Mayor de Blasio announced that a new policy mandates the release all body camera footage in instances when force is used and injury or death occurs. See “New Policies Require NYPD to Release Body Cam Footage, Disciplinary Records” *NBC New York*, June 17, 2020 <https://www.nbcnewyork.com/news/local/new-policy-requires-nypd-to-release-body-camera-footage-within-30-days-of-incident/2467911/>. The “Use of Body-Worn Cameras” Patrol Guide Procedure was also revised in early August 2020. See [https://www1.nyc.gov/assets/nypd/downloads/pdf/public\\_information/212-123.pdf](https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/212-123.pdf).

<sup>354</sup> Louise Matsakis, “Body Cameras Haven’t Stopped Police Brutality. Here’s Why,” *Wired*, June 7, 2020, <https://www.wired.com/story/body-cameras-stopped-police-brutality-george-floyd/> (accessed August 31, 2020); Nell Greenfieldboyce, “Body Cam Study Shows No Effect On Police Use of Force Or Citizen Complaints,” *NPR*, October 20, 2017,

The NYPD has also revised their use of force policies. In October 2015, the NYPD entered into an agreement with the New York Civil Liberties Union (NYCLU) that compelled it to reform its policy by mandating that officers document certain uses of force, and by implementing a data collection and “comprehensive reporting system” to track use of force.<sup>355</sup> In June 2016, the NYPD revised its use of force policy as codified in Patrol Guide Procedures 221-01 and 221-02, which require that officers “[u]tilize de-escalation techniques when appropriate and consistent with personal safety, which may reduce or eliminate the need to use force, and increase the likelihood of gaining the subject’s voluntary compliance.”<sup>356</sup>

The NYPD has also implemented anti-bias and de-escalation trainings. Over half of the patrol force has been certified in a crisis intervention training involving de-escalation techniques.<sup>357</sup> In 2018, NYPD officers were put through implicit bias training as part of a \$4.5 million contract with Fair and Impartial Policing.<sup>358</sup>

There is no reliable evidence that this type of training is effective and anecdotal evidence suggests it is not.<sup>359</sup> For example, Garrett Rolfe, the officer charged with fatally shooting

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<https://www.npr.org/sections/thetwo-way/2017/10/20/558832090/body-cam-study-shows-no-effect-on-police-use-of-force-or-citizen-complaints> (accessed September 1, 2020); Heather Van Blokland, “Police Body Cam Footage Is Being Use For Surveillance, Activists Say,” *NPR*, July 6, 2020, <https://www.npr.org/2020/07/06/887540612/police-body-cam-footage-is-being-used-for-surveillance-activists-say> (accessed August 31, 2020).

<sup>355</sup> Notably, the NYPD did not agree to report instances when officers put a person’s hands against a wall or car during a stop, or when a weapon is drawn. Moreover, while the 2015 NYCLU agreement created a reporting system, it did not alter policies on when or how force could be used. “NYPD Agrees to Use of Force Reforms Advocated by NYCLU,” New York Civil Liberties

Union press release, October 1, 2015, <https://www.nyclu.org/en/press-releases/nypd-agrees-use-force-reforms-advocated-nyclu> (accessed August 31, 2020).

<sup>356</sup> City of New York Police Department, Patrol Guide, “Force Guidelines,” June 1, 2016, [https://www1.nyc.gov/assets/ccrb/downloads/pdf/investigations\\_pdf/pg221-01-force-guidelines.pdf](https://www1.nyc.gov/assets/ccrb/downloads/pdf/investigations_pdf/pg221-01-force-guidelines.pdf) (accessed August 24, 2020); City of New York Police Department, Patrol Guide, “Force Guidelines,” June 27, 2016, [https://www1.nyc.gov/assets/ccrb/downloads/pdf/investigations\\_pdf/pg221-02-use-of-force.pdf](https://www1.nyc.gov/assets/ccrb/downloads/pdf/investigations_pdf/pg221-02-use-of-force.pdf) (accessed August 31, 2020).

<sup>357</sup> Erin Shumaker, “Police reformers push for de-escalation training, but the jury is out on its effectiveness,” *ABC News*, July 5, 2020, <https://abcnews.go.com/Health/police-reformers-push-de-escalation-training-jury-effectiveness/story?id=71262003> (accessed August 31, 2020).

<sup>358</sup> Al Baker, “Confronting Implicit Bias in the New York Police Department,” *New York Times*, July 15, 2018, <https://www.nytimes.com/2018/07/15/nyregion/bias-training-police.html> (accessed August 31, 2020).

<sup>359</sup> Erin Shumaker, “Police reformers push for de-escalation training, but the jury is out on its effectiveness,” *ABC News*, July 5, 2020, <https://abcnews.go.com/Health/police-reformers-push-de-escalation-training-jury-effectiveness/story?id=71262003> (accessed August 31, 2020); Robin S. Engel, Hannah D. McManus, Gabrielle T. Isaza, “Moving beyond “Best Practice”: Experiences in Police Reform and a Call for Evidence to Reduce Officer-Involved Shootings,” February 13, 2020, <https://journals.sagepub.com/doi/10.1177/0002716219889328> (accessed Sept. 17, 2020) (“Of the litany of recommendations believed to reduce police shootings, five have garnered widespread support: body-worn cameras, de-escalation training, implicit bias training, early intervention systems, and civilian oversight. These highly endorsed

Rayshard Brooks in Atlanta in 2016 during an encounter in a Wendy's parking lot after Brooks, who was Black, was found sleeping in his car—was trained in de-escalation and cultural awareness just months before the shooting.<sup>360</sup>

None of these policy changes, trainings, or additional guidelines prevented the police from engaging in the violent crackdown on protesters in Mott Haven, and there is little evidence that they have had any meaningful impact in reducing police violence and abuse in New York City more broadly.<sup>361</sup>

Changes to the NYPD's "stop and frisk" policy, fiercely resisted by the NYPD and then-mayor Michael Bloomberg, but mandated by a court, dramatically reduced the number of interactions between the police and the public – but there continue to be serious problems with the interactions that continue.

Under the stop and frisk policy, NYPD officers regularly stopped and searched hundreds of thousands of people annually, with the NYPD claiming they had reasonable suspicion to do so.<sup>362</sup> Between January 2004 and June 2012, 4.4 million people were searched—83 percent of them Black or Latinx.<sup>363</sup> While a judge found it was not possible to determine whether the NYPD had reasonable suspicion in each of those millions of cases, there was

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interventions, however, are not supported by a strong body of empirical evidence that demonstrates their effectiveness.”); Stacey McKenna, “Police Violence Calls for Measures beyond De-escalation Training,” *Scientific American*, on June 17, 2020, <https://www.scientificamerican.com/article/police-violence-calls-for-measures-beyond-de-escalation-training/> (accessed Sept. 17, 2020). (“Although a review of cross-disciplinary research on de-escalation found that such training probably has slight-to-moderate benefits and few drawbacks, much of the research has methodological weaknesses—including a lack of control groups, dependence on correlational designs and use of self-reporting rather than observation-based data. Thus, despite promising early findings, Engel argues that there is not yet enough systematic research about de-escalation in policing to show it is effective or to guide its use.”);

<sup>360</sup> Brittany Shammass, “Ex-Atlanta officer charged with killing Rayshard Brooks reprimanded for pointing gun at car in 2016,” *Washington Post*, June 20, 2020, <https://www.washingtonpost.com/nation/2020/06/20/former-atlanta-officer-charged-with-killing-rayshard-brooks-reprimanded-pointing-gun-car-2016/> (accessed Sept. 17, 2020). See also, Erin Shumaker, “Police reformers push for de-escalation training, but the jury is out on its effectiveness,” *ABC News*, July 5, 2020, <https://abcnews.go.com/Health/police-reformers-push-de-escalation-training-jury-effectiveness/story?id=71262003> (accessed August 31, 2020).

<sup>361</sup> Jenn Rolnick Borchetta, Scott Hechinger, Maryanne Kaishian, and Jennvine Wong, “Video of police abuses and the NYPD trampling the Constitution reveal ineffectiveness of 'reform,’” *NBC News*, July 31, 2020, <https://www.nbcnews.com/think/opinion/video-police-abuses-nypd-trampling-constitution-reveal-ineffectiveness-reform-ncna1235333> (accessed September 1, 2020).

<sup>362</sup> “On the Stop-and-Frisk Decision: *Floyd v. City of New York*,” *New York Times*, August 12, 2013, <https://archive.nytimes.com/www.nytimes.com/interactive/2013/08/12/nyregion/stop-and-frisk-decision.html> (accessed Sept. 16, 2020) (Opinion and Order, August 12, 2013, pp. 7-8).

<sup>363</sup> “On the Stop-and-Frisk Decision: *Floyd v. City of New York*,” *New York Times*, August 12, 2013, <https://archive.nytimes.com/www.nytimes.com/interactive/2013/08/12/nyregion/stop-and-frisk-decision.html> (accessed Sept. 16, 2020) (Opinion and Order, August 12, 2013, p. 7-8);



significant evidence that it did not, and that the policy was racially discriminatory.<sup>364</sup> In 2013, a federal judge found the stop and frisk policy to be unconstitutional.<sup>365</sup> The Bloomberg administration appealed the judge's order but in 2013, when newly elected Mayor Bill de Blasio took office, he agreed to implement the court-ordered reforms.

Since then, there has been a significant decrease in the number of stops but racial disparities in the stops continue.<sup>366</sup> For example, though Black and Latinx males between the ages of 14 and 24 make up just 5 percent of the city's population, they made up 38 percent of the reported stops between 2014 and 2017, a figure that is only 3 percentage points lower than it was for the same age group during the entirety of the Bloomberg administration.<sup>367</sup> Additionally, in 2017, a court appointed monitor found that some officers were still failing to document encounters as required.<sup>368</sup> Meanwhile, the legacy of more aggressive stop and frisk policies continue to have a lasting impact on the mental health and education of those most impacted and there is little evidence it was essential to fighting crime as Bloomberg and the NYPD claimed.<sup>369</sup>

In response to the George Floyd protests, at least 10 new executive orders and bills were signed into law by New York Governor Cuomo in June 2020. These include: Executive Order No. 203, which requires all New York municipalities with a police agency to review current police force policies and procedures and develop a plan for improvement that addresses the needs of the communities they serve and any racial bias and disproportionate policing of communities of color; Assembly Bill A01360, which clarifies the rights of a person not under arrest or in the custody of law enforcement to record police activity and to maintain

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<sup>364</sup> *Floyd v City of New York*, Opinion and Order, pp. 10 and 13.

<sup>365</sup> Joseph Goldstein, "Judge Rejects New York's Stop-and-Frisk Policy," *New York Times*, August 12, 2013, <https://www.nytimes.com/2013/08/13/nyregion/stop-and-frisk-practice-violated-rights-judge-rules.html> (accessed Sept. 16, 2020); Maggie Astor, "When Did Bloomberg Turn Against Stop-and-Frisk? When He Ran for President," *New York Times*, Feb. 19, 2020, <https://www.nytimes.com/2020/02/19/us/politics/michael-bloomberg-stop-and-frisk.html> (accessed Sept. 16, 2020)

<sup>366</sup> Ashley Southall and Michael Gold, "Why 'Stop-and-Frisk' Inflamed Black and Hispanic Neighborhoods," *New York Times*, Nov. 17, 2019 <https://www.nytimes.com/2019/11/17/nyregion/bloomberg-stop-and-frisk-new-york.html> (accessed Sept. 16, 2020); See also, Michelle Shames and Simon McCormack, "Stop and Frisks Plummeted Under New York Mayor Bill de Blasio, but Racial Disparities Haven't Budged," *New York American Civil Liberties Union*, March 14, 2019, <https://www.aclu.org/blog/criminal-law-reform/reforming-police/stop-and-frisks-plummeted-under-new-york-mayor-bill-de> (accessed Sept. 16, 2020); "Stop- and-Frisk in the de Blasio Era," New York American Civil Liberties, Union, March, 2019, [https://www.nyclu.org/sites/default/files/field\\_documents/20190314\\_nyclu\\_stopfrisk\\_singles.pdf](https://www.nyclu.org/sites/default/files/field_documents/20190314_nyclu_stopfrisk_singles.pdf), p. 2.

<sup>367</sup> Shames and McCormack, "Stop and Frisks Plummeted," *New York American Civil Liberties Union*; "Stop- and-Frisk in the de Blasio Era," New York American Civil Liberties, Union, March, 2019, [https://www.nyclu.org/sites/default/files/field\\_documents/20190314\\_nyclu\\_stopfrisk\\_singles.pdf](https://www.nyclu.org/sites/default/files/field_documents/20190314_nyclu_stopfrisk_singles.pdf), p. 2.

<sup>368</sup> Al Baker, "City Police Officers Are Not Reporting All Street Stops, Monitor Says," *New York Times*, Dec. 13, 2017, <https://www.nytimes.com/2017/12/13/nyregion/nypd-stop-and-frisk-monitor.html>

<sup>369</sup> Emily Badger, "The Lasting Effects of Stop-and-Frisk in Bloomberg's New York," *New York Times*, March 2, 2020, <https://www.nytimes.com/2020/03/02/upshot/stop-and-frisk-bloomberg.html> (accessed Sept. 17, 2020).

custody and control of that recording, along with any property or instruments used to record such police activities; and the Medical Attention for Persons Under Arrest bill, which amends the Civil Rights Law to create a cause of action for failure by law enforcement to provide proper medical treatment for people in their custody.<sup>370</sup>

The New York state legislature also passed a law, named after Eric Garner, criminalizing the use of chokeholds.<sup>371</sup> At the time that Officer Pantaleo used a chokehold on Garner in 2014, their use was already banned by the NYPD, and had been since 1993 – raising questions about how much the new law will change behavior. Shortly after the law passed in June 2020, an officer was charged with using a chokehold, and a coalition of police unions filed a lawsuit seeking to overturn the law.<sup>372</sup>

These legal changes, while welcome, will likely have little effect on policing because they rely too much on an officer's easily abused discretion and, without more fundamental changes, can be replaced by other easily abused uses of force.<sup>373</sup> The current momentum for broad police reform should not be squandered on minor and ineffectual policy changes, or on increased police funding to implement them.

Where such policy changes occur, police do not need and should not receive additional funding for training or implementation; departments already have the resources and tools that they need to implement such changes. As detailed below, scarce funding would be better spent on housing, health, education, and the creation of job opportunities in affected communities.

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<sup>370</sup> According to Executive Order No. 23, the plan must be ratified or adopted by local law or resolution no later than April 1, 2021, or the municipality risks losing state funding. No. 203: New York State Police Reform and Reinvention, June 12, 2020, [https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO\\_203.pdf](https://www.governor.ny.gov/sites/governor.ny.gov/files/atoms/files/EO_203.pdf) (accessed September 1, 2020); New York State Senate Assembly Bill A1360A (signed by Governor Cuomo), June 2020, <https://www.nysenate.gov/legislation/bills/2019/a1360> (accessed August 31, 2020). Assembly Bill A8226A also creates a duty for police officers to respond in good faith in addressing the medical and mental health needs of people under arrest. See New York State Senate Assembly Bill A8226A (signed by Governor Cuomo), June 2020, <https://www.nysenate.gov/legislation/bills/2019/a8226/amendment/a> (accessed August 31, 2020).

<sup>371</sup> “Assembly Passes Eric Garner Anti-Chokehold Act,” New York State Assembly press release, June 8, 2020, <https://nyassembly.gov/Press/files/20200608a.php> (accessed September 23, 2020).

<sup>372</sup> Molly Crane-Newman, “NYPD unions sue NYC over anti-chokehold law, claim ‘ordinary police officer’ is unable to understand it,” *New York Daily News*, August 6, 2020, <https://www.nydailynews.com/new-york/manhattan/ny-chokehold-ban-police-union-sue-20200806-l3jffrvccbfxfcoaxbhbfsebe-story.html> (accessed August 31, 2020). See also Ashley Southall, “N.Y.P.D. Officer Charged With Using Illegal Chokehold,” *New York Times*, June 25, 2020, <https://www.nytimes.com/2020/06/25/nyregion/nypd-officer-chokehold-arrest.html> (accessed September 23, 2020).

<sup>373</sup> “US: Reject #8CantWait Policing Program,” Human Rights Watch news release, June 9, 2020, <https://www.hrw.org/news/2020/06/09/us-reject-8cantwait-policing-program>.

## VIII. Way Forward: Structural Change

“We don’t need to buy sophisticated armor and militarize our police, while we need funding for basic stuff like food, housing so people can live in dignity, and programs to build our school system...We should spend money on taking kids off the street and educating them. If kids are graduating from middle school and high school and going to college and getting a job, then you won’t see them in gangs...Get these people an education and keep them busy through programs where they can learn, and then you can get them off the street and pull the crime rate down. You don’t need police on the street to do this...If we take money away from militarizing our police and bring it to the communities, then in the long-term, our community can be richer, safer and prosper.”

—Abdourahmane Diallo, protester in Mott Haven on June 4, 2020 <sup>374</sup>

Human Rights Watch urges New York officials to take the following steps to address the serious police misconduct and human rights violations documented in this report during and after the Mott Haven protest on June 4, 2020:

### To the Bronx District Attorney

- Drop all charges against those arrested during or after the protest for minor violations such as unlawful assembly, curfew violations, and obstruction of traffic, given the abusive nature of the arrests and violations of fundamental human and civil rights. This should include ensuring that these charges are permanently erased from the records of those who were arrested;
- Commit to continue declining prosecution and filing to dismiss summonses for all arrests stemming from First Amendment-protected protests.

### To the Commissioner of the New York Police Department (NYPD)

- Immediately place all officers who played a supervisory role in the Mott Haven operation on suspension;
- Ensure that disciplinary measures, up to and including dismissal, and, where appropriate, referrals to the District Attorney for criminal prosecutions are imposed on police officers and their supervisors who engaged in misconduct and violated

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<sup>374</sup> Human Rights Watch telephone interview with Abdourahmane Diallo, August 29, 2020.

fundamental human and civil rights of protesters, observers, and bystanders during the Mott Haven protest;

- Respond to and investigate all complaints related to the Mott Haven protest that are brought to the Civilian Complaint Review Board (CCRB) and the NYPD Internal Affairs Bureau (IAB) and implement recommendations from the New York Attorney General.

## **To the Office of the Mayor of New York City**

- Take appropriate disciplinary action, including possible dismissal, against Commissioner Dermot Shea for spreading misinformation about the Mott Haven protest and Chief of Department Terence Monahan for his role in the violent and abusive crackdown on protesters in Mott Haven;
- Adopt measures to start to repair the harm caused to peaceful protesters and the Mott Haven community, such as by using discretionary funding from the Fiscal Year (FY) 2021 budget to support community-based organizations that provide food, health care, personal protective equipment (PPE), education support, and other social services to at-risk community members, in close consultation with community leaders and activists;
- Require full transparency regarding the NYPD budget and spending;
- Put the NYPD under a hiring freeze and cancel the three police recruitment classes still scheduled for FY 2021.

## **To the Governor of New York**

- Require that the NYPD and other New York State police departments immediately comply with the changes to Criminal Legal Procedure 150.20(1)(a), adopted in January 2020, which bar individuals from being arrested, including being handcuffed or brought in for processing, for charges below a Class E felony, except in some limited circumstances, such as sex-related offenses, domestic violence, or if the person has outstanding warrants or is unwilling or unable to make their verifiable identity and contact information known, after being given a reasonable opportunity to do so. Instead, individuals must be given summons or appearance tickets on the street.

**Beyond these immediate measures, the police misconduct during the Mott Haven protest reveals much deeper, systemic problems that require comprehensive reforms and a re-imagining of public safety.**

Human Rights Watch urges the New York State governor, State Legislature, New York City mayor, New York City Council, other elected officials, and the NYPD to work towards enacting the following structural reforms<sup>375</sup>:

- 1) *Reduce the role of police in addressing societal problems. This should include dramatically decreasing the size of the NYPD police force, the scope of issues that police officers respond to, and the funding allocated to the NYPD. It should also come with increased transparency to allow for community oversight of the NYPD's budget and spending.*

This should include disbanding police units that engage in policing crimes of poverty and decreasing the size of the police force through attrition. As shown during the Mott Haven protest, and scores of other protests across the country since George Floyd's death, a heavy police deployment during largely peaceful protests often leads to escalation, violence, and abuse, and curtails the fundamental rights of those protesting. Similarly, police involvement in responding to mental health crises, homelessness, drug use and addiction, and school safety often leads to overcriminalization, arbitrary detentions and searches, including through "stop and frisk" tactics, racial profiling, mass incarceration, and lower levels of police violence that can escalate into more severe physical harm and at times death. All of this disproportionately impacts Black and brown communities and does little to address the underlying societal problems.

- 2) *Invest greater resources in communities to advance public safety and equal rights, including through support to services that directly address underlying issues such as substance use disorders, homelessness, and poverty and that improve access to quality education, health care, and mental health support.*

In impoverished communities such as Mott Haven, funding for these social services and for community development should be prioritized over funding the police. This should include plans to develop and preserve affordable housing and social services, instead of policing homelessness; providing sufficient community-based voluntary drug treatment and harm reduction services, instead of policing drug use; efforts to maintain effective, supportive, and voluntary mental health services in the community, instead of responding

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<sup>375</sup> Many of these reforms are explained in greater detail in the Human Rights Watch report *A Roadmap for Re-imagining Public Safety in the United States: 14 Recommendations on Policing, Community Investment, and Accountability* (New York: Human Rights Watch, 2020), <https://www.hrw.org/news/2020/08/12/roadmap-re-imagining-public-safety-united-states>.

to mental health issues with policing; and allow immigrants to thrive instead of living in fear of law enforcement.

Significant investments are also needed to ensure that those living in communities like Mott Haven have the same access to quality education, health care, and employment opportunities as those living in wealthier, and often whiter, parts of the city. This should include funding quality after-school, preschool, and child-care programs for youth, and support to local initiatives that provide employment, training, education, and recreation for people in impoverished communities and for formerly incarcerated people.

Policymakers and elected officials should consider reforms put forward by New York advocates as part of a “Community Action Safety Plan.”<sup>376</sup> The plan includes proposals such as passing the New York Health Act, which aims to guarantee health care to every New Yorker, funding a pilot program to create units that could provide a non-police response to mental health 911 calls; adult literacy education; and college in prison programs, among other things.<sup>377</sup>

Other legal steps should also be taken to reduce over-policing and over-criminalization. For example, Human Rights Watch supports the Marijuana Regulation and Taxation Act, which would legalize the production, distribution, and use of marijuana by removing it from New York’s Controlled Substances Act, allowing for the sale, distribution, and use of marijuana and marijuana products similar to the way alcohol and tobacco are regulated.<sup>378</sup> The law would also create ways for those convicted of marijuana-related offenses to have their sentences removed or reclassified and would impose a tax on the sale of certain marijuana products. This tax would help raise revenue to establish a fund for community-based projects including adult education services, job training, the expansion of afterschool programs, re-entry services, and other community-centered projects.<sup>379</sup> These programs would help undo many of the harms associated with decades of enforcing laws

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<sup>376</sup> ““Community Action Safety Plan: Housing, Health, Education, Employment and Justice, in 2020,” Community Alternatives, <http://www.communityalternatives.org/wp-content/uploads/2020/06/community-safety-action-plan.pdf> (accessed Sept. 17, 2020).

<sup>377</sup> New York State Assembly Bill A5248A, Provides for establishment of the New York Health plan, 2019-2020 Legislative Session, <https://www.nysenate.gov/legislation/bills/2019/a5248> (accessed September 24, 2020).

<sup>378</sup> New York State Senate Bill S1527C, Enacts the ‘marihuana regulation and taxation act’; 2019-2020 Legislative Session, <https://www.nysenate.gov/legislation/bills/2019/s1527> (accessed September 24, 2020).

<sup>379</sup> “Summary of the Marijuana Regulation and Taxation Act (MRTA),” “Start Smart New York, <http://smart-ny.com/mrta-summary/> (accessed Sept. 17, 2020). See also, “Ending Marijuana Prohibition in New York: Summary of the Marijuana Regulation and Taxation Act,” Drug Policy Alliance, [http://smart-ny.com/wp-content/uploads/2017/06/MRTA-Bill-Summary\\_04.8.2019.pdf](http://smart-ny.com/wp-content/uploads/2017/06/MRTA-Bill-Summary_04.8.2019.pdf) (accessed September 23, 2020).

criminalizing drug use and possession, including the possession of marijuana, as documented by Human Rights Watch and many others.<sup>380</sup>

### *3) Empower independent accountability and oversight mechanisms.*

The CCRB should be re-envisioned to make it a truly independent community oversight body, with full access to police records, subpoena power, authority to conduct investigations, and the power to discipline officers and command staff. The NYPD and CCRB should also build a public database of all NYPD disciplinary allegations and findings, as promised through the repeal of New York Civil Rights Law Section 50-a, including those that are unsubstantiated, which would allow community members to hold the disciplinary system to account. Officials should also support national and state legislation that will remove legal immunities that protect law enforcement officers from liability, including the doctrine of qualified immunity. They should also work to ensure that officers found guilty of misconduct in one police department cannot merely move to another police department.

New York lawmakers should pass S.7527/A. 10560, a bill that would repeal chapter 834 of the laws of 1940 and potentially open the path for more independent accountability mechanisms.<sup>381</sup> This chapter, and court cases interpreting it, require disciplinary and misconduct proceedings against police officers to be conducted within the NYPD – they cannot be transferred to more independent bodies.<sup>382</sup> Repealing chapter 834 will not solve the problem of a lack of independence in police disciplinary proceedings but, once repealed, proceedings can take place at more independent bodies, such as the Office of Administrative Tribunals and Hearings (OATH) where disciplinary proceedings against the city’s other public employees generally take place.<sup>383</sup>

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<sup>380</sup> Human Rights Watch and the American Civil Liberties Union, *Every 25 Seconds: The Human Toll of Criminalizing Drug Use in the United States*, October 2016, [https://www.hrw.org/sites/default/files/report\\_pdf/usdrug1016\\_web\\_o.pdf](https://www.hrw.org/sites/default/files/report_pdf/usdrug1016_web_o.pdf); Human Rights Watch, *A Red Herring: Marijuana Arrestees Do Not Become Violent Felons*, November 2012, <https://www.hrw.org/report/2012/11/23/red-herring/marijuana-arrestees-do-not-become-violent-felons>

<sup>381</sup> “An Act to repeal chapter 834 of the laws of 1940, relating to the removal of certain policemen,” <https://www.nysenate.gov/legislation/bills/2019/s7527> (accessed Sept. 22, 2020).

<sup>382</sup> “Laws of New York of 1940, Chapter 834,” <https://bit.ly/2HrnfCB> (accessed September 22, 2020); *Lynch v. Giuliani*, 301 A.D.2d 351, 359, 755 N.Y.S.2d 6, 14 (2003), <https://www.leagle.com/decision/2003652301ad2d3511594> (accessed Sept. 22, 2020); “Legislative Memo: Removal of Certain Police Officers,” NYCLU, ACLU of New York, <https://www.nyclu.org/en/legislation/legislative-memo-removal-certain-police-officers> (accessed Sept. 22, 2020); Frederick P. Schaffer, “New York Should Amend the Law Requiring Police Disciplinary Cases Be Tried Within the Police Department” *Gotham Gazette*, August 18, 2020 <https://www.gothamgazette.com/citizens-union-speakers/153-citizens-union-speakers/9684-new-york-amend-law-requiring-police-disciplinary-cases-tried-within-nypd> (accessed Sept. 22, 2020).

<sup>383</sup> “Legislative Memo: Removal of Certain Police Officers,” NYCLU, ACLU of New York, <https://www.nyclu.org/en/legislation/legislative-memo-removal-certain-police-officers> (accessed Sept. 22, 2020).

- 4) Create a new mechanism for selecting the NYPD Commissioner that allows for meaningful community engagement, and prevent police contracts from shielding officers implicated in abuses.*

The presence of the NYPD's Chief of Department Terence Monahan and at least 24 other police supervisors during the crackdown in Mott Haven on June 4 – and the subsequent defense of the police action and presentation of false evidence by Commissioner Dermot Shea – exemplify how the department's most senior officers condone, encourage, participate in, and excuse police misconduct, setting a clear example for all of the officers below them to follow. Shea, Monahan, and other top officials implicated in abuse and cover-ups should face disciplinary action including possible dismissal for their betrayal of the public's trust and leadership in the violation of basic rights. Community members, from a broad cross-section of the city, should be actively involved in selecting the next commissioner.

In order to end the abusive role of union negotiated contracts, police union contracts should not allow for officers accused of committing violations, including human rights abuses, to be shielded from investigation or disciplinary action, and should not call for disciplinary records to be erased or expunged after a certain period of time. When union leaders threaten violence against residents, promote white supremacy or incitement to violence, discrimination, or hostility, or actively obstruct investigations into police misconduct, they should not receive immunity. City officials should immediately investigate and take appropriate disciplinary action against members of the relevant police union. Officials should also seek to pass legislation that will forbid unions from providing special protections for officers in disciplinary matters related to allegations of abuse in civilian interactions – such as erasing disciplinary records or allowing officers accused of misconduct to access the entire investigative file before being interrogated – as opposed to worker/management issues that labor unions are typically involved in. City officials and police unions should use collective bargaining agreements as opportunities for developing solutions to address police abuses, for example by protecting whistleblowers who “break the blue wall of silence.”

★★

The protesters in Mott Haven on June 4, and others who joined the massive movement against police violence and systemic racism across the United States since the killing of George Floyd, have articulated powerful demands to hold police officers accountable for their misconduct and to re-envision public safety.



Instead of cracking down on protesters and stifling their calls for change, policymakers and elected officials in New York City and across the country should listen to their demands. This means exhibiting bold leadership, standing up to powerful police departments and unions, and pushing forward comprehensive and meaningful reforms to end the structural racism and systemic police abuse that people in Mott Haven and communities like it have experienced for far too long.

## Acknowledgments

This report was researched and written by Julie Ciccolini, research technologist, and Ida Sawyer, acting crisis and conflict director. Madeline de Figueiredo, crisis and conflict division associate, provided research, editing, and production support.

Joshua Colangelo-Bryan, Dan Goldberger, Shevon Rockett, Fara Sunderji, Tony Badaracco, Lucy Onyeforo, Kim Frumkin and Chirag Domadia of the law firm of Dorsey & Whitney LLP provided pro bono research support and legal analysis.

James Ross, legal and policy director, provided legal review; and Fred Abrahams, associate program director, provided programmatic review. John Raphling, senior researcher in the US program; Laura Pitter, deputy director of the US program; Megan McLemore, health and human rights consultant; and Komala Ramachandra, senior researcher in the business and human rights division, provided specialist reviews. Gabi Ivens, head of open source research; Belkis Wille, senior conflict and crisis researcher; Jonathan Pedneault, conflict and crisis researcher; and Richard Weir, conflict and crisis researcher, provided research support. Grace Choi, director of publications and information design; Travis Carr, publications associate; and Fitzroy Hepkins, administrative manager, prepared the report for publication.

Human Rights Watch would like to thank the many activists, community leaders, lawyers, and others who took the time to share their experiences with us.

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## Annex I : Letter from Human Rights Watch to the NYPD

HUMAN  
RIGHTS  
WATCH

Dermot Shea  
Police Commissioner of the City of New York  
1 Police Plaza  
New York, NY 10038

July 31, 2020

Re: Police response to June 4 protest in Mott Haven

Dear Commissioner Shea,

I am writing on behalf of Human Rights Watch, an international nongovernmental organization that investigates human rights abuses in over 90 countries, including the United States.

We are currently investigating the police response to a protest on June 4, 2020 in New York City's 40<sup>th</sup> Precinct. We are writing to request a meeting to discuss our findings thus far and to ask for your response to several questions related to the incident. In order to ensure that your perspective is reflected in our forthcoming report, we would be grateful if you could respond by August 14.

As you know, on the evening of June 4, a group of protesters met at 149<sup>th</sup> Street and 3<sup>rd</sup> Avenue in the Bronx's Mott Haven neighborhood at around 6 p.m. Following initial speeches, they then marched through the neighborhood to protest police violence and systemic racism in law enforcement. Human Rights Watch has interviewed several witnesses present during the protest and reviewed 150 videos that were taken from different vantage points during the protest, obtained via social media or sent to us directly.

According to witness accounts and the video footage, at about 7:56 p.m., protesters encountered a large number of officers from the New York Police Department (NYPD) with helmets, shields, batons and bikes who "kettled" them on 136<sup>th</sup> Street between Brown Place and Brook Avenue, blocking them with no exit routes before the city's curfew began at 8 p.m. Following this, witness accounts and videos show police officers beating protesters with batons, firing pepper spray, and rounding up scores of protesters for arrest. Witnesses reported that the NYPD also detained legal observers from the National Lawyers Guild wearing neon green hats and people who

said they were essential workers. Witnesses said the police actions happened without warning or provocation.

According to witness accounts, many of those detained were held for prolonged periods – from several hours to 19 hours, or as long as a week in one case. Many who were arrested said they were taken to precincts in Queens and Brooklyn instead of being processed in the Bronx. Many were charged with curfew violations or unlawful assembly and given Desk Appearance Tickets (DATs) or summonses to appear in court in October.

We would appreciate if you could respond to the following questions:

1. Can you confirm whether a permit application was submitted for this protest?
2. How many individuals were arrested at this protest? This includes individuals who were arrested during the protest, but who were not processed until June 5 or after.
3. Could you please provide a list all the charges/violations brought against individuals who were arrested in the context of this incident, including the number of individuals charged with each specific violation, and whether they were issued as a DAT, summons, or criminal complaint?
4. According to the National Lawyers Guild, in a letter to you on June 7, 2020, at least nine of their legal observers were detained during the June 4 protest in Mott Haven, despite clear guidance in the NYPD patrol guide that permits properly identified legal observers free access to observe demonstrations and an attestation from the mayor's office exempting legal observers from the curfew.<sup>384</sup> The letter further states that at least some of the arrests of legal observers "appear to have been supervised and/or ordered by a NYPD Legal Bureau attorney wearing a riot helmet bearing Shield No. 26435. When protesters verbalized concern about the arrest of an LO, that NYPD Legal Bureau officer responded by repeatedly shouting 'Legal Observers CAN be arrested, you're good to go.'" Have you investigated this situation, and has the legal bureau officer or anyone else responsible for targeting legal observers faced disciplinary or other consequences?
5. Which police units and commanders were deployed to cover this protest?
6. How many protesters were injured during the protests that you are aware of? What is the extent of those injuries? Were any Internal Affairs Bureau (IAB) investigations opened in relation to any civilians injured during this protest or while in NYPD custody?
7. Were any NYPD officers injured during this protest? If so, what is the extent of those injuries and how did they occur?
8. How much overtime was submitted to date by any member of the NYPD for their involvement in the policing or prosecution of individuals from the June 4 protest in Mott

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<sup>384</sup> [https://www.scribd.com/document/464875743/2020-6-7-Nlgnyc-Lo-Letter-Final-Ocr-730pm-1#from\\_embed](https://www.scribd.com/document/464875743/2020-6-7-Nlgnyc-Lo-Letter-Final-Ocr-730pm-1#from_embed)

Haven? This includes those involved in patrolling the protest, transferring protesters to precincts, processing arrests, and court appearances related to the arrests.

9. Have any complaints of police misconduct during this protest been made with the NYPD? Has any NYPD investigation been initiated into allegations of misconduct and abuse by police officers during this protest? If so, who carried out the investigation, what is the status of the investigation, and what were the findings and results, if it is completed?
10. Have any police officers faced disciplinary consequences for their conduct during this protest?
11. During Mayor Bill De Blasio's daily briefing on June 5, this specific protest was mentioned.<sup>385</sup> You said during the briefing that the organizers of the protest "put out posters advertising that they were going to burn things down, that they were going to injure cops, that they were going to cause mayhem." Do you have copies of these posters and any other information regarding these intentions that you could share with us?
12. You also mentioned during the June 5 briefing that you "had a plan which was executed nearly flawlessly in the Bronx." Could you provide us with more details on your plans and the basis for them? Were there any unusual disorder plans, special tactical plans, special events plan, or large-scale arrest processing procedures in place in relation to this protest?
13. You said during the June 5 briefing that these protests involved "outside agitators." Who were these outside agitators you were referring to, where were they from and what did they do to cause you concern?
14. You mentioned during the June 5 briefing that the police recovered a firearm, gasoline, and weapons from the protests. NYPD Deputy Commissioner John Miller later told the *New York Post* that the firearm was recovered from an alleged gang member and his girlfriend, who were apprehended about a half mile away from the start of the march and do not appear to have any connection to the protest.<sup>386</sup> In an interview with the *Gothamist*, the NYPD's Chief of Department Terence Monahan said the gasoline was actually recovered the night before the June 4 protest.<sup>387</sup> Were any firearms, gasoline, or weapons recovered from any of the protesters on June 4 during the course of the demonstration, or after they had been taken into custody by the NYPD on other charges?
15. On June 22, during your testimony to the Attorney General's office, you testified that invitees to the June 4 protest "encouraged local gangs to converge on the event's site to harm police and destroy property."<sup>388</sup> Which local gangs were encouraged and how? What evidence do you have of this?

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<sup>385</sup> <https://www.youtube.com/watch?v=lzBVymmBmfE>

<sup>386</sup> <https://nypost.com/2020/06/08/nypd-commissioner-ignores-his-own-misinformation-warnings/>

<sup>387</sup> <https://gothamist.com/news/nypd-chief-monahan-george-floyd-protests-interview>

<sup>388</sup> <https://ag.ny.gov/NYPDtestimony>

16. According to The Legal Aid Society and guidance from the Mayor's Office, if a police officer has reason to believe an individual is breaking curfew, they should be given an order to disperse and be provided with a reasonable opportunity to do so.<sup>389</sup> Were protesters given a dispersal order before being kettled on 136<sup>th</sup> Street and Brook Avenue? Videos indicate that protesters were blocked in the kettle before the 8 p.m. curfew took place. Were protesters given a reasonable opportunity to disperse once they were kettled?
17. Why were individuals arrested during the protest brought to Queens and Brooklyn for processing instead of local Bronx precincts or Bronx Central Booking?
18. Many officers on the scene were wearing black full body gear that is not listed in the uniform section of the NYPD Patrol Guide 204-03. These uniforms also did not appear to have any officer identifying information on them, such as last name or shield number. What are the regulations for wearing these uniforms? How are these uniforms in line with NYPD Patrol Guide 204-15, which requires officers to "wear a shield at all times while in uniform"?

We would be grateful if you could provide responses to these questions, and any other information you would like to share, by August 14, 2020. We also hope to have the opportunity to discuss these issues in more detail during a virtual or in person meeting at your earliest convenience. I can be reached at [REDACTED]  
Sincerely,

Ida Sawyer  
Acting Crisis and Conflict Director

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<sup>389</sup> <https://legalaidnyc.org/get-help/arrests-policing/what-you-need-to-know-about-protesting-and-the-nyc-curfew/>; <https://www1.nyc.gov/assets/counseltothemayor/downloads/Curfew-FAQ.pdf>

## Annex II: Letter from the NYPD to Human Rights Watch



POLICE DEPARTMENT

NEW YORK, N.Y. 10038-1497

ERNEST F. HART

DEPUTY COMMISSIONER, LEGAL MATTERS

September 16, 2020

Ida Sawyer  
Acting Crisis and Conflict Director  
Human Rights Watch  
350 5<sup>th</sup> Avenue, 34<sup>th</sup> Floor  
New York, NY 10118

Re: Police Response to June 4 Protest in Mott Haven

Dear Director Sawyer:

On behalf of Police Commissioner Shea, I am writing in response to your letter, dated July 31, 2020, stating that Human Rights Watch is investigating the police response to a demonstration, which was entitled "Fk the Police," on June 4, 2020 in the Mott Haven section of the Bronx.

While Commissioner Shea cannot answer every question that was posed in your initial letter, I will refer you to his submitted written statement and testimony before a hearing conducted by the New York State Attorney General on June 22, 2020, which focused on police and public interactions during the George Floyd protests and the subsequent rioting that took place. His prepared statement and testimony can be found here: <https://ag.ny.gov/nypd-protest-response#video>. Many of the questions that you posed were answered during that hour-long exchange with Attorney General James.

Fundamental to a free society is the right to communicate one's ideas and the NYPD believes in the importance of the First Amendment and the public's right to peacefully express themselves. Regardless of the subject, it is the responsibility of the NYPD to secure, support and facilitate a safe environment for lawful and peaceful dissent. New York City endured unprecedented turmoil during the early days of the George Floyd demonstrations. Unfortunately, some in attendance took advantage of the mostly peaceful public demonstrations, protests, and marches; using them as opportunities to engage in acts of vandalism, arson, property destruction, looting, and most notably, targeted attacks against police officers. As police officers worked to restore order, they were attacked with bricks, knives, trash cans, vehicles, glass bottles, bricks, masses of concrete, and homemade incendiary devices like Molotov cocktails. Department vehicles were set ablaze and precinct houses were attacked. Nearly 400 NYPD personnel were injured during the protests and subsequent riots. 65% of our injured personnel had to be treated at a hospital.

I believe any inquiry into the performance of NYPD officers during this challenging time must also account for this reality. Given the mission of your organization, the rights of these human beings, members of the NYPD, should not be discounted simply because they wore a uniform and dedicated their lives to public service.

Following several consecutive nights of violence, Mayor de Blasio declared a state of emergency within the City on June 1, 2020. On June 3, 2020, a city-wide curfew was imposed by Executive Order

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Misc. 243-48 (34-19)

(No. 119). The executive order stated that from June 3<sup>rd</sup> to June 8<sup>th</sup>, between the hours of 8PM to 5AM, no persons or vehicles may be in public. The order did not apply to first responders, medical professionals, and those performing or traveling to and from “essential work” as defined by the Empire State Development Corporation (ESDC).

As noted above, on June 4, 2020, the Bronx played host to a “Fk the Police Rally.” Social media advertisements, postings, and invites to the event encouraged killing and injuring police officers, looting, resisting arrest, and fire-bombing police vehicles. Local gangs were encouraged on social media to converge on the event site to attack police and destroy police, city-owned, and privately-owned property. A firearm was recovered from a member of the “Mac Balla” gang just prior to the start of the rally, and a car stop of three individuals who were en route to the rally yielded hammers, fireworks, and lighter fluid. Simply put, the intent of this assembly was to engage in violence and inflict harm. More pointedly, given the name of the rally and its stated intentions, its purpose was to direct violence at a class of individuals based on their profession.

Upon 8PM on June 4, 2020, the demonstration that took place in Mott Haven was unlawful under the Mayor’s Executive Order establishing a curfew. After 8PM, officers policing this demonstration observed individuals who were not essential workers in public. That observation provided officers with probable cause to take, at a minimum, enforcement for Administrative Code Section 3-108, Violating a Mayoral Executive Order, a “B” misdemeanor. Their detention was lawful. Individuals who engaged in other unlawful activity, in addition to violating the curfew, were charged accordingly.

Your letter alleges that legal observers deployed by the National Lawyers Guild (NLG) were “targeted” for arrest. I strongly disagree with this allegation. As noted above, the Mayor’s curfew order did not apply to first responders, medical professionals, and those performing or traveling to and from “essential work.” Notably, the Order stated the following:

“Essential Work” is work performed by essential business or entities as defined by the Empire State Development Corporation.”

Contrary to your letter, as well as assertions made by NLG in the media, legal observers did not enjoy an exemption as essential workers. As you probably know, very often the observers are not attorneys – but even if they were, this type of activity was not exempted under guidance issued by ESDC at the time. I note the following from such guidance:

“Lawyers may continue to perform all work necessary for any service so long as it is performed remotely. Any in-person work presence shall be limited to work only in support of essential businesses or services; however, even work in support of an essential business or service should be conducted as remotely as possible. (Emphasis Added)”

Officers policing this demonstration who observed individuals who were not essential workers in public, including legal observers, during the hours of 8PM to 5AM, had probable cause to take enforcement for Administrative Code Section 3-108. Plainly, there cannot be a legal observer of a protest that itself is illegal. Such arrest and detention, however, are not a commentary on the value of the NLG Legal Observers, legal support for protestors, or the Department’s position on the program. Over the years, we have found the presence of legal observers at protests and demonstrations to be constructive.

Lastly, your letter references witness accounts who state that that they were held for prolonged periods in Department custody. During the Floyd protests, the NYPD experienced an exceptional state of affairs. By June 4<sup>th</sup>, over 2,500 individuals were taken into Department custody in connection with the protests. The climate during the protests made it impossible for officers to issue summonses on the street

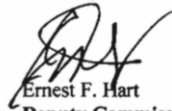


safely. These arrests needed to be processed in a Department facility, which at the beginning of these protests took place in the Mass Arrest Processing Center (MAPC) at 1 Police Plaza.

While certainly not optimal, such prolonged detentions were judicially scrutinized and found legally permissible hours before the “Fk the Police” rally on June 4<sup>th</sup>. In response to a writ of habeas corpus issued in *People of the State of New York ex rel. Corey Stoughton on Behalf of Lazeme Harris et al. v. Shea*, claiming that the Department was “slow-rolling” arrests of protests, New York Supreme Court held that the elongated detentions were reasonable given the pressures the Department was facing from the demonstrations as well as restrictions from the COVID-19 pandemic while at the same time literally deploying nearly all of its officers to address the civil unrest. Nevertheless, despite this ruling, the Department instituted a number of measures in an attempt to expedite the release of detainees for the remaining days of the protests.

Thank you for your letter and for your inquiry.

Sincerely,

A handwritten signature in black ink, appearing to read 'E. Hart', written over a horizontal line.

Ernest F. Hart  
Deputy Commissioner,  
Legal Matters



# “KETTLING” PROTESTERS IN THE BRONX

## Systematic Police Brutality and Its Costs in the United States

On June 4, 2020, New York City police carried out a planned assault and mass arrests of peaceful protesters in the Mott Haven neighborhood of the South Bronx, a low-income Black and brown community that has long faced systemic racism and police brutality. The operation was among the most aggressive police responses to protests across the United States following the police killing of George Floyd in Minneapolis, Minnesota on May 25.

About 10 minutes before the 8 p.m. curfew, scores of police officers surrounded and trapped the roughly 300 protesters, not allowing them to disperse. Just after 8 p.m., the police, unprovoked and without warning, advanced on the protesters, whaling their batons, beating people from car tops, and firing pepper spray into people’s faces before rounding up about 250 of them for arrest. Clearly identifiable legal observers and street medics were also targeted.

“Kettling” Protesters in the Bronx, based on interviews or written accounts from 81 protesters and observers and analysis of 155 videos recorded during the protest, reveals how the police action in Mott Haven was deliberate, planned and in violation of international human rights law. The operation illustrates a culture within the New York police force, modeled by top commanders, that encourages and condones violence and abuse. The report describes the government’s ineffective accountability mechanisms that protect police officers, shows the shortcomings of incremental reforms, and makes the case for structural change.

*(above) Unprovoked and without warning, New York City police officers assaulted and arrested peaceful protesters they had trapped in Mott Haven on June 4, 2020, beating them from car tops.*

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*(front cover) New York City police officers trapped, assaulted, and arrested over 250 people during a peaceful protest in Mott Haven on June 4, 2020.*

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