



August 2, 2016

Mayor Chris Coleman
City of St. Paul
Saint Paul Logo
15 Kellogg Blvd. West
Saint Paul, MN 55102

Chief Todd Axtell
St. Paul Police Department
367 Grove St.
Saint Paul, MN 55101

Re: Police treatment of Philando Castile demonstrators

Dear Mayor Coleman and Chief Axtell,

The ACLU of Minnesota has received numerous reports of police using excessive force, including pepper spray and rubber bullets, against demonstrators at the Governor's mansion who are peacefully protesting the killing of Philando Castile. Perhaps most disturbingly, we have heard from numerous witnesses that police seriously injured a disabled man by spraining his arm while effectuating his arrest, and that they further victimized a sexual assault survivor by dragging her several feet by her bare legs and subjecting her to an intrusive search that included a male officer patting her down and lifting up her skirt. It is our understanding that the disabled man who was injured by police suffers from cerebral palsy, a disability that makes the individual more susceptible to injury. It is also common for sexual assault survivors to suffer from PTSD, which is a recognized disability under the ADA.

We have also received troubling reports about the use of pepper spray against peaceful demonstrators – including a 16-year-old boy and a journalist – and that peaceful demonstrators were arrested even while attempting to comply with police orders. Those arrests were apparently the result of unclear and unclear and arbitrary expectations for demonstrators, making the situation more chaotic than necessary because demonstrators do not know what rules police expect them to follow from one moment to the next. Demonstrators reported to us that police arrested individuals who were complying with police orders by remaining on the sidewalk and not blocking the sidewalk, based on the conduct of a few demonstrators who were not complying with police orders.

These reports raise a troubling specter of excessive police force in violation of demonstrators' First and Fourth Amendment rights. The fact that some individuals did not comply with police orders does not give police carte blanche to broadly arrest large groups of people, thereby undermining the constitutional right to assemble. When police use heavy-handed tactics against peaceful demonstrators and noncompliant people alike, they are punishing the misdeeds of the few through the theft of constitutionally protected rights of the many. This violates fundamental tenets of the constitutional rights to free speech and due

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process. “[A]n individual's decision to remain in a public place of his choice is as much a part of his liberty as the freedom of movement inside frontiers.” *City of Chicago v. Morales*, 527 U.S. 41, 54 (1999). Any restriction on an individual’s ability to remain in a public place—including an order to disperse—is therefore subject to exacting constitutional scrutiny under both the free speech and due process clauses. *See, e.g., id.*; *Gregory v. City of Chicago*, 394 U.S. 111 (1969); *Shuttlesworth v. Birmingham*, 382 U.S. 87 (1965).

Government rules governing assemblies may not restrict a substantial amount of constitutionally-protected conduct, or else they are invalid. *See Boos v. Barry*, 485 U.S. 312, 331–32 (1988). In *Boos*, the Supreme Court held that a ban on certain demonstrations outside a foreign embassy was valid because it did not “prohibit peaceful congregations; its reach [was] limited to groups posing a security threat.” Dispersal orders must be extremely rare, and carefully tailored to real security threats, in order to avoid infringing on protected expression. Indeed, the Supreme Court has ruled that individuals who are lawfully protesting are “clearly entitled to First Amendment protection” even when *onlookers* close to the demonstration become unruly. *Gregory*, 394 U.S. at 113. Thus, dispersal orders should be targeted only to those engaged in activity that is unlawful and creates a risk of violence or harm, and the orders may not apply to peaceful protesters. *See, e.g., Morales*, 527 U.S. at 58 (“If the loitering is in fact harmless and innocent, the dispersal order itself is an unjustified impairment of liberty.”).

Under the principles of due process, valid dispersal orders must be accompanied by detailed, actual notice to any individual before they may be arrested or charged with any crime. *See Wright v. State of Ga.*, 373 U.S. 284, 293 (1963); *Morales*, 527 U.S. at 59. *Morales* makes clear that any dispersal order must be specific about the exact duration and geographical boundary of any dispersal order. *Id.* In order to be constitutionally permissible, any dispersal order must give an “ordinary citizen adequate notice of what is forbidden and what is permitted,” including the exact area subject to any temporary dispersal order, and adequate time to comply with any such order before the threat of arrest. *Id.* at 60; *see also Wright*, 373 U.S. at 293.

From the founding of our Nation, the people have taken to the streets and sidewalks, in good times and bad, in times of peace and times of war, to express their opinions to the public and to the government. Punishing peaceful protesters for exercising this most fundamental of all American values is not a solution to the protests that have erupted in the wake of the police killing of Philando Castile. We need more protest, expression, discussion, and debate—not less.

The heavy-handed treatment of non-violent protestors by police is part of a larger pattern of police treating communities of color as the problem rather than an indispensable part of the solution. It continues this community’s experience of law enforcement as there to control and dictate, rather than to serve and protect.

The overly rough treatment of individuals with disabilities and sexual assault survivors is especially problematic. Police have an obligation to ensure that their actions do not re-victimize people who have experienced significant trauma. Police also have an obligation to accommodate individuals with disabilities when they are interacting with them, including when they are arresting them. Title II of the ADA prohibits discrimination by any public agency, and requires the agency to take disability into account by making reasonable modifications of their policies and practices where needed. 42 U.S.C. §§ 12131, 12132 (2013) 28 C.F.R. § 35.130(b)(7). The ADA applies to arrests and related police interactions. *Roberts v. City of Omaha*, 723 F.3d 966, 973 (8th Cir. 2013) (“[T]he ADA and the Rehabilitation Act apply to law enforcement officers taking disabled suspects into custody.”).

U.S. Department of Justice guidance for law enforcement warns that “[w]hen dealing with persons with disabilities, law enforcement agencies often fail to modify policies, practices, or procedures in a variety of law enforcement settings—including citizen interaction, detention, and arrest procedures. . . . When interacting with police and other law enforcement officers, people with disabilities are often placed in unsafe situations or are unable to communicate with officers because standard police practices and policies are not appropriately modified.” U.S. Dep’t of Justice, Civil Rights Div., Commonly Asked Questions About The Americans With Disabilities Act And Law Enforcement (2006).

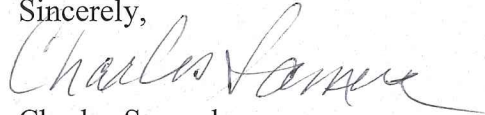
In the absence of a “direct threat” (defined as a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices or procedures. . . .” police have an obligation to modify their practices or procedures. 28 C.F.R. § 35.104. In this case, there was no immediate risk to health or safety, thus, police could have de-escalated the situation (a standard reasonable modification), and worked with the disabled man to effectuate his arrest in a manner that minimized the risk of injury to him.

People have a right to know when and where their conduct is lawful under all circumstances, but especially when the government is restricting activities that are protected by the First Amendment. People have a right to know where they can stand and raise their voices without fearing arrest or military-style assault. But thus far, police have been unclear in what is allowed and what is not. That lack of clarity will only serve to infringe on constitutional rights and will further damage the relationship between police and the community. We all want to ensure the safety and welfare of all members of the community, but that cannot come at the expense of constitutional freedoms. We can balance the interest in safety with the rights of lawful protesters.

We respectfully request that you severely restrict the use of pepper spray, and physical force. We also request that you provide training and improved guidelines for officers to use when dealing with people exercising their First Amendment rights and when dealing with individuals with disabilities and sexual assault

survivors. The people from whom the police derive their powers are trying to articulate a very important message and we hope you will listen, and move forward towards the common goal of ensuring equal safety and equal treatment for everyone in Minnesota.

Sincerely,

A handwritten signature in cursive script that reads "Charles Samuelson". The signature is written in black ink and has a fluid, connected style.

Charles Samuelson
Executive Director