

TIN FULTON WALKER & OWEN

October 18, 2016

Via Email (kputney@cmpd.org) & Facsimile (704-336-5714)

Chief Kerr Putney
Charlotte-Mecklenburg Police Department
601 E. Trade Street
Charlotte, NC 28202

Re: Protecting the Constitutional Rights of Non-Violent Protesters

Dear Chief Putney:

We write to request that the Charlotte-Mecklenburg Police Department (CMPD) immediately stop its use of unreasonable and unnecessary force against non-violent people exercising their constitutional right to assemble. CMPD's actions during the protests last month in the wake of Keith Lamont Scott's killing resulted in violations of the First Amendment (speech and assembly clauses), Fourth Amendment (unreasonable seizure and use force), and the Fourteenth Amendment (due process, equal protection, selection enforcement and prosecution). We further request that CMPD review its policies and procedures to ensure the free exercise of First Amendment rights, to reduce the likelihood of future violations of those rights and to improve safety within the community.

As you know, protesters have been gathering and marching in the streets of Charlotte since September 20, 2016, in response to the killing of Charlotte native Keith Lamont Scott. Since that date, on repeated occasions, governmental actors operating under your authority have intimidated protesters by unjustifiably denouncing them as violent and inexcusably assaulting them with tear gas.

For example, on September 20, CMPD lodged tear gas and shot rubber bullets at nonviolent protesters gathered on Old Concord Road and W.T. Harris Boulevard. Bodies of protesters were burned by tear gas canisters that were shot by CMPD at close range. On September 21, CMPD initiated an attack on non-violent protesters by the EpiCentre. Police marched towards the protesters, violently struck them with clubs, and thereafter detonated a smoke bomb, a flash bomb, and tear gas into the crowd of protesters without justification. The victims in these incidents included non-

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violent, lawfully gathered protesters and members of long-standing civic organizations, including the NAACP, faith leaders, and legal observers.

Throughout these protests, while peaceful crowds prayed and chanted, CMPD, without provocation or justification, have targeted the leaders of protest groups and arrested them on a range of charges. Based on the information we have at this time, it also appears that African-American leaders have been specifically targeted with arrest and excessive force.

Aggressive tactics, including, but not limited to, the use of tear gas, riot gear, and body armor have been captured on video and widely shared on national news outlets and social media. These videos show CMPD police officers tossing tear gas canisters from a distance into the middle of large groups of individuals, sending many running, choking, and gasping for air. As a precaution against this emerging practice of your department, protesters have begun to equip themselves with gallons of milk to treat tear gas exposure.

These are just a few examples of the actions that CMPD has taken in recent weeks that must not continue. Such police action raises significant concerns that individuals' constitutional rights are being violated by CMPD, whose actions have also led to the suppression and curbing of protestors' right to assemble. The undersigned represent individuals and organizations who have engaged in constitutionally-protected protest activity since September 20 and intend to engage in further related activity until their demands are met. We are deeply concerned about the anticipated police response to these activities. In light of CMPD's prior conduct, our clients are rightly concerned that their constitutional rights will be violated, and that they may face risk of serious injury or worse.

Accordingly, we request an immediate written response to this letter stating that the City, through CMPD and your command, will protect citizens' essential rights guaranteed under the United States and North Carolina Constitutions by ceasing the unreasonable use of tear gas and any other harmful and unnecessary means against non-violent protesters in Charlotte.

Specifically, we request your assurance that the following unconstitutional actions will not occur:

Excessive Use of Force and Suppression of Speech and Assembly

- General dispersal orders, including dispersals with the use of tear gas, directed at groups without probable cause to believe the group plans to violate the law
- Use of police lines to trap, detain, and prohibit free movement without lawful basis and without clear notice of violation, lawful orders, and opportunity to comply with any such lawful order, including orders to disperse and clear avenues of exit for any such dispersal
- Arrests or detentions without individualized probable cause
- Searches and seizures of property without warrant or probable cause
- Over-charging arrestees, including, but not limited to, misapplication of N.C.G.S. §§ 14-223 (resist/delay/obstruct) and 288.4 (disorderly conduct).

Intimidation of Citizens Through Surveillance

It has been reported that law enforcement personnel have been unjustly tracking and targeting protesters by way of social media, in an effort to intimidate and harass them. Such surveillance has succeeded in discouraging constitutionally-protected activity, and constitutes illegal intimidation and a prior restraint of free speech. We hereby request that all officers under your charge immediately cease and desist all surveillance and targeting of community members based on their exercise of protected speech and involvement in protest activity.

To be certain, our clients, and many others, will continue to organize and engage in lawful expressive activities—marches, rallies, etc.—into the foreseeable future. Such activities are all core forms of protected speech and petitioning activities under the First Amendment to the United States Constitution.

Should law enforcement under your command continue to use excessive and unreasonable force against protesters, we are prepared to proceed with litigation to immediately protect their constitutional rights and to pursue any claims for damages arising as a result of such actions.

Our clients are planning to engage in further constitutionally-protected protests in Charlotte on Thursday, October 20, 2016, Friday, October 21, 2016, and Saturday, October 22, 2016. Due to the importance and urgency of these matters, your immediate response to these concerns is requested. We seek to guarantee that peaceful protesters in Charlotte will be protected from tear gas and any other weapon that has been unnecessarily used by CMPD. If we are not able to reach a quick and clearly defined agreement as to these matters by the close of business on Wednesday, October 19, 2016, we may seek injunctive relief through the courts.

Thank you in advance for your prompt attention to our request.

Sincerely,

/s/ Jacob H. Sussman

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