

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:22-cv-1213-NYW-SKC

TEJAS COUSIK,
TARIN ALLEN,
JAKE DOUGLAS,
ALEJO GONZALEZ,
JEREMY HEDLUND,
ROBERT HELMICK,
PHILLIP LOPEZ,
TYSON MCCORMICK,
BRIANNE SANCHEZ,
EMMA SMEDBERG,
JAMES WILLIAMS,
MARIAH WOOD,
ABIGAIL ZINMAN,

Plaintiffs

v.

CITY AND COUNTY OF DENVER, COLORADO, and
CITY OF AURORA, COLORADO,

Defendants.

FOURTH AMENDED COMPLAINT AND JURY DEMAND

Now come Plaintiffs, Tejas Cousik, Tarin Allen, Jake Douglas, Alejo Gonzalez, Jeremy Hedlund, Robert Helmick, Phillip Lopez, Tyson McCormick, Brianne Sanchez, Emma Smedberg, James Williams, Mariah Wood, Abigail Zinman, through their attorneys, LOEVY & LOEVY, and hereby complain of Defendants City and County of Denver and City of Aurora, Colorado, as follows:

INTRODUCTION

1. This action arises out of protests in Denver and across the nation following the murder of George Floyd on May 25, 2020, by Minneapolis police officers. The events in Minneapolis brought out millions of people around the country at once to peacefully protest the deaths of Black and brown people by law enforcement and vigilantes condoned by local law enforcement as well as the systemic racism that oppresses Black, Indigenous, and people of color. Despite the COVID-19 pandemic, thousands of people came out to demonstrate in Denver and elsewhere in Colorado.

2. Although the protests were overwhelmingly peaceful, the Denver Police Department (“DPD”) and officers from other agencies in DPD’s mutual-aid network used violent crowd control tactics against these peaceful protestors. Over the course of several days, the DPD and its mutual-aid officers deployed constitutionally unlawful crowd control tactics, including kettling, indiscriminate and unwarned launching of tear gas and flashbangs into crowds and at individuals, and shooting projectiles at protestors. These protestors included many young Black and brown people.

3. The DPD and its mutual-aid officers knowingly placed these protestors in physical danger through indiscriminate use of excessive force.

4. The DPD and its mutual-aid officers intentionally used force on peaceful protestors with no lawful justification.

5. Not only did this excessive use of force injure many protestors, journalists, and bystanders, but it chilled individuals from exercising their First Amendment rights and suppressed speech.

6. The DPD and its mutual-aid officers targeted journalists and others simply documenting their conduct. They also targeted medics who were seeking to give aid to those harmed.

7. Although the protests were overwhelmingly peaceful, the DPD arrested over 350 people over the course of several days beginning on May 28, 2020, the first day of the protests in Denver, most of whom were arrested solely for violating Denver's emergency nighttime curfew order, which was in effect from May 30 through June 5, 2020.

8. For numerous days beginning on May 28, 2020, the DPD and its mutual-aid officers used methods of "less-lethal" force to discourage and suppress peaceful protest in public places (including streets, sidewalks, and parks) in Denver, particularly in the downtown area.

9. The actions of Defendants City and County of Denver, DPD and its mutual-aid officers infringed on the rights of protestors, journalists, and bystanders to be free from unreasonable seizures and use of force under the Fourth and Fourteenth Amendments.

10. The purpose and effect of this excessive use of force was to prevent, deter, and suppress protestors from exercising their First Amendment right to

exercise freedom of speech, peaceably assemble, and petition for redress of grievances.

11. Plaintiffs bring this action seeking damages on behalf of themselves to redress the harms caused by Defendants and DPD's violent and unconstitutional conduct.

Jurisdiction

12. This court has jurisdiction of this action pursuant to 28 U.S.C. § 1331.

13. Venue is proper under 28 U.S.C. 1391(b). All parties reside in this judicial district, and the events giving rise to the claims asserted herein occurred in this judicial district.

The Parties

14. Plaintiff Tejas Cousik is a student and resident of Colorado.

15. Plaintiff Tarin Allen is a case manager for a tax consultant group and a resident of Colorado.

16. Plaintiff Jake Douglas is a union organizer and a resident of Louisiana.

17. Plaintiff Alejo Gonzalez is a labor organizer and a resident of Colorado.

18. Plaintiff Jeremy Hedlund is a union organizer and a resident of Colorado.

19. Plaintiff Robert Helmick is a software engineer and a resident of Colorado.

20. Plaintiff Phillip Lopez is a resident of Colorado.

21. Plaintiff Tyson McCormick works as a solar installer and resident of Colorado.

22. Plaintiff Brianne Sanchez is a small business owner and a resident of Colorado.

23. Plaintiff Emma Smedberg is a restaurant server and a resident of Colorado.

24. Plaintiff James Williams works for a tree service company and is a resident of Colorado.

25. Plaintiff Mariah Wood is a union organizer and a resident of Louisiana.

26. Plaintiff Abigail Zinman is a law school graduate and a resident of Colorado.

27. Defendant City and County of Denver (“Denver”) is a Colorado municipal corporation. The DPD is an agency of the Defendant City and County of Denver, and all actions of the DPD are the legal responsibility of the City and County of Denver. Denver is sued on the basis of its policies, customs, and practices which gave rise to Plaintiffs’ federal civil rights claims.

28. Defendant Denver delegated to Patrick Phelan, as Incident Commander, final decision- and policymaking authority over the protests and the police response to the protests. Phelan was in charge of coordinating the officers in the field and directed when and what kinds of force officers could use on protestors.

29. At all material times herein, Defendant Denver was responsible for supervising, enacting, and enforcing the DPD's conduct, policies, and practices; the absence of necessary policies and practices; and for the hiring, retention, supervision, and training of employees and agents of the DPD.

30. Defendant Denver requested the assistance of other law enforcement agencies in responding to the protests, pursuant to mutual-aid agreements. These agencies included the Aurora Police Department ("APD").

31. A DPD supervisor was embedded with each team of outside officers from the DPD's mutual-aid network, including APD.

32. Defendant Denver and DPD reviewed its "rules of engagement" with the outside officers from its mutual-aid network before allowing them to provide assistance to the DPD, including APD.

33. Defendant Denver directed the actions of outside officers from DPD's mutual-aid network, including APD.

34. As Incident Commander, Phelan was in charge of the officers from the other law enforcement agencies who provided mutual aid. Phelan gave the same direction, guidance, and rules of engagement to the officers from other agencies as he did to DPD officers.

35. Defendant Denver was responsible for the actions of the members of its mutual-aid network, including but not limited to the Jefferson County Regional SWAT Team ("JCRS") and Aurora Police Department ("APD").

36. The acts and omissions of DPD officers and mutual-aid officers were at all material times pursuant to the customs, policies, practices, and/or procedures of Defendant Denver and DPD.

37. At all times relevant thereto, DPD officers and mutual-aid officers were the agents, servants, and/or employees of Defendant Denver were acting at all times under color of law and within the scope of their agency or employment and with the knowledge and consent of their principal or employer.

38. The official and express policy of Defendant Denver was to allow the members of its mutual-aid network to follow their own policies, practices, and/or customs regarding the use of “less-lethal” weapons and use of force during the protests.

39. Defendant City of Aurora, Colorado (“Aurora”), is a Colorado municipal corporation. The Aurora Police Department (“APD”) is an agency of Defendant Aurora, and all actions of the APD are the legal responsibility of Aurora. Defendant Aurora is sued on the basis of its policies, customs, and practices which gave rise to Plaintiffs’ federal civil rights claims.

Factual Background

40. On Monday, May 25, 2020, a Minneapolis police officer brutally murdered George Floyd, an unarmed and non-resisting Black man, while other police officers stood by and watched.

41. Innumerable people held peaceful protests across the world condemning police brutality and systemic racism in the wake of the state-sponsored

and/or sanctioned/excused murders of George Floyd, Breonna Taylor, Ahmaud Arbery, Elijah McClain, Tony McDade, and countless others.

42. These constitutionally protected and essential protests occurred amid an unprecedented public health crisis. Novel coronavirus, COVID-19, has killed 1 million Americans, infected millions more, and continues to spread. The virus is commonly understood to be transmittable through exposure to respiratory droplets. At the time of the protests, public health and government officials, including in Denver, advised people to wear masks if they were outside and to stay six feet apart.

43. At or around 5:00 p.m. on May 28, 2020, hundreds of protestors gathered at the Colorado State Capitol in downtown Denver to protest police brutality and racism against Black, brown, and Indigenous people in the United States. Protestors carried signs, chanted, and knelt.

44. Thousands of protestors assembled to demonstrate in Denver every day for many days.

45. Protestors frequently assembled at the Colorado State Capitol building, but they also marched down streets, primarily in the downtown Denver area.

46. During the protests, the DPD and its mutual-aid officers employed violent crowd control tactics to corral, intimidate, and suppress the speech of protestors.

47. DPD and its mutual-aid officers used a variety of “less-lethal” weapons, including tear gas, flashbang grenades, PepperBalls, rubber bullets, and other projectiles fired directly at protestors.

48. DPD and its mutual-aid officers used these tactics on protestors who were demonstrating peacefully, without first issuing adequate (or any) warnings, lawful (or any) orders, or giving protestors adequate time to disperse.

49. Tear gas is a general term for aerosolized chemical agents. Tear gas generally includes CS (o-chlorobenzylidene malonitrile) and OC (oleoresin capsicum).

50. Tear gas activates pain receptors and leads to intense burning pain in the eyes, nose, throat, lungs, skin and mucus membranes. It also causes disorientation, severe coughing, crying, and difficulty breathing.

51. DPD and its mutual-aid officers also used kinetic impact projectiles (“KIPs”) during the protests on peaceful protestors.

52. KIPs refer to a range of projectiles used in crowd control settings that are made from combinations of rubber, plastic, PVC, various metals, wood, hard foam, and wax, which are often generically referred to as “rubber bullets.” These include foam batons and rubber pellets. (The term “rubber bullet” used henceforth has the meaning provided in this paragraph.)

53. DPD and APD uses 40mm launchers to shoot KIPs.

54. The 40mm launchers shoot projectiles at a speed of 90 to 100 miles per hour.

55. KIPs frequently cause contusions or welts.

56. When shot at close range, KIPs can cause serious bodily injury or death.

57. When shot from farther range, KIPs have reduced accuracy.

58. During the protest, APD used launchable tear gas canisters, which were tear gas canisters that they launched from 40mm launchers.

59. Launching gas canisters from 40mm launchers is extremely dangerous. Gas canisters should never be launched at the body of a person, especially at their head.

60. In addition, the use of riot control face gear makes the targeting of these weapons even more difficult.

61. DPD and its mutual-aid officers consistently wore riot gear while present during the protests in Denver beginning on May 28, 2020.

62. PepperBall guns are air-powered launch devices that fire rounds containing plastic sphere projectiles filled with OC powder. These spheres explode OC powder onto the person who gets hit, causing not only physical pain from the impact, but also causing the person to struggle to breathe.

63. PepperBalls and pepper spray have an immediate and incapacitating effect that creates a burning sensation to any exposed skin.

64. Flashbang grenades, also known as noise flash diversionary devices (“NFDDs”), are explosives that make a loud noise and/or flash of light and are made to temporarily blind and/or deafen people and to disorient them.

65. Flashbang grenades can cause serious bodily injury, including damage to hearing, burns, or even death.

66. “Stinger” or rubber-ball grenades are high-risk explosive devices that, when detonated, explode 8 grams of flash powder to propel up to 180 rubber-balls in 360 degrees as far as 50 feet. They also emit a bright flash and an approximately 175-decibel noise. When exploding outwards, the rubber balls cause physical pain and sometimes serious injury, and the light and sound from the blast can be extremely disorienting.

67. Officers from Denver’s mutual-aid network also used other weapons, such as shotguns that fire beanbag rounds. These “beanbags” are generally filled with #9 lead shot. One manufacturer warns that “[s]hots to the head, neck, thorax, heart, or spine can result in fatal or serious injury.”

68. Defendant Denver and Phelan, or his designee, expressly authorized and approved the mutual-aid officers’ use of other, more dangerous weapons that DPD does not normally use, including but not limited to shotguns that fire beanbag rounds.

69. Over the course of several days, beginning on May 28, 2020, DPD and its mutual-aid officers shot tear gas, PepperBalls, flashbang grenades, Stinger grenades, and KIPs at groups of largely peaceful protestors near the Capitol and in the downtown Denver area.

70. DPD and its mutual-aid officers used these weapons indiscriminately and without any or adequate warning, even at times when the crowd was merely chanting, kneeling, or standing with their hands up.

71. Many people were hit with projectiles and thousands inhaled tear gas or suffered pain and burning in their eyes, nose, mouth and throat from PepperBalls and tear gas used by the officers.

72. DPD and its mutual-aid officers also used “kettling” as a tactic against the protestors. Kettling, which derives from a German military term referring to an army surrounded by a much larger force, is a police tactic whereby officers confine a large group of people to a designated space by surrounding them on all sides so that there is no escape. By doing so, the officers effectively control people’s movements.

73. Kettling leads to the unlawful seizure of people without a reasonable basis, creates panic, elevates tensions, and chills speech. DPD and its mutual-aid officers accomplished this by forming police lines around protestors. They also kettled protestors before using “less-lethal” weapons on them such as tear gassing, pepper spraying, throwing flashbangs, and shooting rubber bullets at them.

74. One tactic used by DPD and its mutual-aid officers during the protests was to chase nonviolent protestors into alleys, trap them, and then shoot chemical weapons such as tear gas or pepper spray at them, and/or flashbang grenades.

75. On Friday, May 29, 2020, peaceful protestors again gathered at the Capitol. DPD officers near the protest site at the Capitol wore riot gear. Protestors

chanted, “Why are you in riot gear, I don’t see no riot here.” Without provocation or warning, DPD officers fired “less-lethal” weapons into the crowd of protestors.

76. Throughout the hours that followed, DPD officers continued to engage in other violent and intimidating tactics, including shooting protestors who were kneeling and chanting with their hands up.

77. DPD officers also used “less-lethal” weapons on members of the press as well as individuals recording or photographing their activities.

78. On Saturday, May 30, 2020, peaceful protestors assembled at the Capitol in the afternoon. In response and over the next several hours, DPD and its mutual-aid officers intimidated protestors with “less-lethal” weapons.

79. Some DPD and mutual-aid officers fired KIPs, PepperBalls, or pepper spray directly at protestors’ heads, faces, and/or groins.

80. Other DPD officers fired at protestors while hanging off of the side or back of moving police vans or trucks.

81. DPD officers also shot at protestors from above or an elevated position.

82. DPD and its mutual-aid officers also shot “less-lethal” weapons at protestors peacefully kneeling on the ground and chanting.

83. Only DPD officers had PepperBall guns during the protests.

84. On May 30, 2020, at around 1:00 p.m., the Mayor of Denver declared an “emergency” and announced a curfew order for the entire city, set to begin at 8:00 p.m. that evening.

85. Denver did not have sufficient justification under the law to declare a “state of local emergency” and issue a citywide “emergency” curfew order.

86. The curfew was issued while thousands of individuals peacefully marched and demonstrated in Denver.

87. The curfew was imposed in all public places within the City and County of Denver, including streets and public rights-of-way, from 8:00 p.m. on May 30, 2020 to 5:00 a.m. on Sunday, May 31, 2020, and from 8:00 p.m. on May 31, 2020 until 5:00 a.m. on June 1, 2020.

88. On June 1, 2020, the Mayor of Denver extended the curfew for four more days. The curfew was in effect each night from 9:00 p.m. to 5:00 a.m. on the evenings of June 1, 2, 3, and 4, 2020, ending at 5:00 a.m. on June 5, 2020.

89. The constitutionality of the curfew is currently being litigated in a certified class action.

Factual Allegations Relating to Plaintiffs

Plaintiff Alejo Gonzalez

90. Plaintiff Alejo Gonzalez attended the protests on May 28 and 30, 2020. He attended to protest police brutality against Black and brown people.

May 28, 2020

91. On May 28, 2020, Gonzalez marched with other peaceful protestors in the downtown area and north towards I-25. Gonzalez and other protestors marched to I-25.

92. DPD officers used “less-lethal” weapons on protestors on I-25.

Protestors as well as bystanders on the pedestrian walkway and pedestrian bridge were exposed to large doses of chemical munitions.

93. Gonzalez saw officers shooting at people who had already gotten off or were trying to get off the highway. He did not see anyone throw anything at the officers or commit an act that would have justified the indiscriminate use of force.

94. Gonzalez was shot in the chest with a PepperBall while trying to help people get away from the police weapons and chemicals.

95. Gonzalez did not hear any warnings, dispersal orders, or announcements prior to the officers’ use of force on protestors.

96. Gonzalez inhaled aerosolized chemicals from the officers’ weapons.

97. Officers’ use of force on protestors in the area of I-25 at the Highland pedestrian bridge at about 7:00 p.m. on May 28, 2020 was consistent with DPD policy.

98. Commander Phelan authorized the use of “less-lethal” weapons on protestors in the area of I-25 at the Highland pedestrian bridge at about 7:00 p.m. on May 28, 2020.

99. No DPD officers were disciplined for any use of force on protestors in the area of I-25 at the Highland pedestrian bridge at about 7:00 p.m. on May 28, 2020.

100. Gonzalez marched with other protestors to 16th Street and Platte Street. At that location, Gonzalez and other protestors peacefully chanted and protested.

101. A DPD officer aimed a weapon at Gonzalez's groin for no reason. Gonzalez told him to stop.

102. A DPD officer shot Gonzalez with a PepperBall without warning or justification.

103. Officers' use of force in the area of 16th Street and Platte Street on May 28, 2020 between 7:15 and 8:00 p.m. was consistent with DPD policy.

104. Commander Phelan authorized the use of "less-lethal" weapons on protestors in the area of 16th Street and Platte Street on May 28, 2020 between 7:15 and 8:00 p.m.

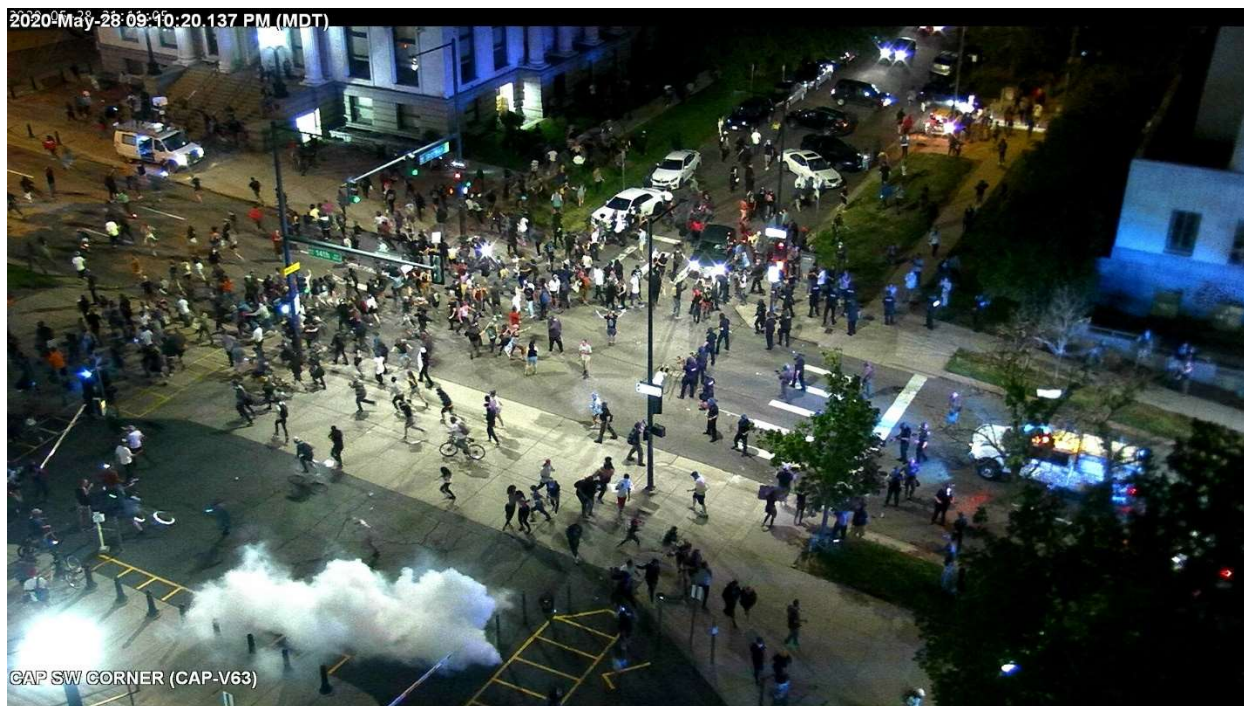
105. No DPD officers were disciplined for any use of force on protestors in the area of 16th Street and Platte Street on May 28, 2020 between 7:15 to 8:00 p.m.

106. After this, Gonzalez marched back downtown with other protestors. He ended up at the intersection of 14th Avenue and Sherman Street, on the south side of the Capitol. Gonzalez was there after it got dark.

107. At first, it was a relaxed atmosphere among the protestors at the intersection of 14th Avenue and Sherman Street. It was peaceful, and people were chanting, playing music, and even dancing.

108. There was a line of DPD officers on 14th Avenue.

109. At about 9:10 p.m., DPD officers tear gassed the crowd, including Gonzalez, without any audible warnings, announcements, or dispersal orders:



110. There was no justification for this use of force on Gonzalez and the other protestors.

111. DPD Lts. James Williams and Thomas Pine were present and ordered the officers to use tear gas and “less-lethal” weapons on the group of protestors.

112. As Incident Commander, Commander Phelan authorized and ordered Lts. Williams and Pine to use tear gas on the protestors.

113. Officers’ use of force at or around 9:10 p.m. on May 28, 2020 at the intersection of 14th Avenue and Sherman Street was consistent with DPD policy.

114. No DPD officers were disciplined for any use of force on protestors at or around 9:10 p.m. on May 28, 2020 at the intersection of Sherman Street and 14th Avenue.

May 30, 2020

115. On May 30, 2020, at approximately 4:00 p.m., Gonzalez marched with other protestors to the District 6 police station at Colfax Avenue and Washington Street.

116. The crowd was largely peaceful and chanting. They were stopped by a line of police officers as they attempted to march north on Washington.

117. Without warning, announcements, or dispersal orders, DPD officers threw tear gas, flashbang grenades or other explosive devices, and used other “less-lethal” weapons on protestors.

118. Gonzalez did not see anyone throw anything at the officers or commit any act that justified the use of force.

119. An officer hit an unhoused man with some kind of projectile; he fell to the ground, but the officers continued throwing explosives and gas. Gonzalez and others ran into the tear gas to grab the man to get him to safety; if they had not done so, he could have been trampled by other protestors.

120. Gonzalez inhaled a significant amount of gas deployed by the officers.

121. One protestor was knocked to the ground unconscious by a flashbang grenade or other explosive device that a DPD officer threw next to him:



122. No officer rendered medical aid to this man. Instead, other protestors had to attend to him.

123. Officers' use of force on protestors between approximately 4:00-4:30 p.m. on May 30, 2020 at or around the intersection of Colfax Avenue and Washington Street was consistent with DPD policy.

124. In fact, before the explosives and gas depicted in the above screenshot were thrown, a DPD sergeant complained to another DPD sergeant that he just told DPD officers from Citywide Impact to "Pepperball this crowd to get 'em outta here" but they "just fucking sat there and stared at me," and so he was never going to put Citywide "on the frontline ever fucking again." About ten minutes after that, a different unit of DPD officers fired on the protestors.

125. No DPD officers were disciplined for any use of force on protestors between 4:00-4:30 p.m. on May 30, 2020 at or around the intersection of Colfax Avenue and Washington Street.

126. Commander Phelan authorized the use of chemical munitions on protestors between 4:00-4:30 p.m. on May 30, 2020 at or around the intersection of Colfax Avenue and Washington Street.

127. After this, Gonzalez marched to the area of the Capitol.

128. From about 6:00 to 8:00 p.m. on May 30, 2020, DPD and Aurora police officers formed a skirmish line across Colfax, just north of Lincoln.

129. DPD Gang Unit and Metro/SWAT Officers were standing in the skirmish line across the intersection of Lincoln and Colfax, starting from the southwest curb line.

130. Numerous DPD supervisors were present.

131. Aurora police officers were standing in the skirmish line west of the DPD officers, from the southwest curb line west to Broadway.

132. Only DPD Metro/SWAT officers had flashbang grenades.

133. Numerous DPD Gang Unit officers and Metro/SWAT officers had PepperBall guns.

134. Aurora police officers did not have any PepperBall guns.

135. Aurora police officers did not have any flashbang grenades.

136. Aurora police officers threw chemical munitions only at the direction or authorization of DPD supervisors, including Commander Phelan.

137. Thousands of people were on the Capitol grounds, on Lincoln, and in Veterans Park and Civil Center Park, south of the skirmish line.

138. The protestors were largely peaceful.

139. Many protestors were chanting, holding signs, standing with their hands up, or kneeling in front of the officers.

140. On numerous occasions in the hours before curfew at 8:00 p.m., DPD officers threw flashbang grenades, tear gas, or other chemical munitions into the peaceful crowd of protestors without warning or justification and otherwise indiscriminately used their “less-lethal” weapons on protestors without warning or justification.

141. No warnings, orders, or announcements were given before the indiscriminate use of force on Gonzalez and other protestors at the intersection of Lincoln and Colfax between 6:00 and 8:00 p.m. on May 30, 2020.

142. On this day, and throughout the protests, DPD policy required use of chemical munitions, including tear gas, to be authorized by the Command Post (that is, Incident Commander Phelan), unless there were exigent circumstances, in which case a command-level officer at the scene could authorize the use of chemical munitions.

143. Between 6:00 and 8:00 p.m., Gonzalez peacefully protested while standing or kneeling on Lincoln facing the skirmish line of officers on Colfax.

144. At about 6:30 p.m., Gonzalez saw an officer shoot a projectile at another protestor. This projectile hit the protestor in the head; the protestor

dropped to the ground like a rock. No police officers provided immediate medical attention. Instead, Gonzalez and other protestors rushed over to help the protestor.

145. As Gonzalez and others were attempting to help this protestor, DPD officers shot PepperBalls at them. They yelled at the police to stop shooting.

146. Eventually, police officers marched forward, grabbed the injured protestor, and threw him onto a stretcher.

147. It was an inappropriate and unconscionable way to handle a person with a serious head injury.

148. At about 6:48 p.m., Gonzalez stood peacefully with a sign that said, "JAIL ALL KILLER COPS!"



149. At another point, Gonzalez and other protestors knelt and locked arms at the front of the crowd. For no apparent reason, and without giving any warning or dispersal orders and without justification, one or more DPD officers began pepper

spraying people. Gonzalez was on his knees with his hands up. In response to this unwarranted use of force, Gonzalez moved back.

150. When Gonzalez tried to help another protestor who had been pepper sprayed in the face, a DPD officer threw a flashbang grenade or other explosive device at Gonzalez, which hit his ankle and exploded at his foot. The explosion caused ringing in his ears.

151. On another occasion while Gonzalez was kneeling in the front, one or more DPD officers threw explosive devices or tear gas canisters into the crowd for no apparent reason, and without giving any warning or dispersal orders and without justification. Gonzalez had been kneeling with other protestors:



152. Officers' use of force from 5:30 to 8:00 p.m. on May 30, 2020 at or around the intersection of Lincoln and Colfax was consistent with DPD policy.

153. Officers' use of force on Gonzalez on May 30, 2020 at the intersection of Lincoln and Colfax was consistent with DPD policy.

154. Commander Phelan authorized the use of chemical munitions and "less-lethal" weapons on protestors between 5:30 and 8:00 p.m. in and around Colfax and Lincoln, Colfax and Broadway, and the area of the Capitol on May 30, 2020.

155. No DPD officers were disciplined for any use of force on protestors at around the intersection of Lincoln and Colfax on May 30, 2020 from 5:30 to 8:00 p.m.

156. No DPD officers were disciplined for any use of force on Gonzalez at the intersection of Lincoln and Colfax on May 30, 2020 from 5:30 to 8:00 p.m.

157. At no time during his attendance at the protests did Gonzalez throw anything, commit any act of violence or property destruction, or commit any act that would have justified the use of force on him.

158. On one or more days when he attended the protests and during the events described above, Gonzalez experienced tear gas and/or pepper spray or other aerosolized chemicals, which caused coughing, difficulty breathing, irritation and burning in the eyes, nose, throat, and mouth and a burning sensation on the skin. Gonzalez also had bruises from being shot with Pepperballs.

Plaintiff Tarin Allen

159. Plaintiff Tarin Allen attended the protest on May 30, 2020. She arrived at the Capitol area at approximately 6:30 p.m. She attended to protest police brutality against Black, brown and Indigenous people.

160. At approximately 6:48 p.m., Allen was standing on Lincoln facing the skirmish line of officers on Colfax facing south. She was holding a sign in one hand and recording the police and protest with her cell phone in her other hand. She was peaceful:



161. The crowd was also peaceful and was chanting, “Hands up, don’t shoot.”

162. A DPD officer shot Allen with a PepperBall, without any warning or justification.

163. This use of force on Allen on May 30, 2020 at approximately 6:48 p.m. was consistent with DPD policy.

164. This use of force on Allen on May 30, 2020 at approximately 6:48 p.m. was authorized by Commander Phelan.

165. No officers were disciplined for the use of force on Allen on May 30, 2020.

166. At no time did Allen throw anything, commit any act of violence or property destruction, or commit any act that would have justified the use of force on her.

167. Prior and subsequent to this, DPD officers also indiscriminately threw tear gas into the crowd, which affected Allen by causing coughing, difficulty breathing, irritation and burning in the eyes, nose, throat, and mouth and a burning sensation on her skin. Allen also had a bruise from being shot with the PepperBall.

Plaintiff Jake Douglas and Mariah Wood

168. Plaintiffs Jake Douglas and Mariah Wood participated in the protests on numerous days in May and June 2020. They attended to protest police brutality against Black and brown people.

May 30, 2020

169. On May 30, 2020, at approximately 4:30 p.m., Douglas and Wood marched with other peaceful protestors in the downtown area. There were approximately 1,000 protestors.

170. While Douglas, Wood, and other protestors were near the 16th Street Mall, between California and Welton, DPD Officers, led by Lt. Vincent Porter, arrived and began shooting PepperBalls at the protestors at about 4:48 p.m.

171. There was no provocation by the protestors. Protestors had been peacefully chanting, and some of them were kneeling or laying down in front of the officers.

172. No warnings, orders (including dispersal orders), or announcements were made prior to the use of force.

173. Officers' use of force on protestors at or about 4:48 p.m. on May 30, 2020 at 16th Street between California and Welton was consistent with DPD policy.

174. Commander Phelan authorized the use of force on protestors at or about 4:48 p.m. on May 30, 2020 at 16th Street between California and Welton.

175. No DPD officers were disciplined for any use of force on protestors at or about 4:48 p.m. on May 30, 2020 at 16th Street between California and Welton.

176. Douglas and Wood went back to the area of the Capitol.

177. Between 6:00 and 8:00 p.m., Douglas and Wood were with hundreds of other people peacefully protesting the police lined up at the intersection of Lincoln and Colfax.

178. One or more DPD officers indiscriminately threw chemical munitions and explosive devices into the crowd for no apparent reason.

179. Douglas and Wood were tear gassed repeatedly during this time. They were also gassed as they were leaving around the time of curfew.

180. At one point, Douglas and Wood knelt with other protestors in front of the officers and chanted, with their hands up or arm-in-arm with other protestors. The protestors were peaceful. One or more DPD officers threw explosive devices or tear gas canisters into the crowd for no apparent reason, and without giving any warning or dispersal orders and without justification. Douglas and Wood were kneeling with other protestors:



181. No warnings, orders, or announcements were given before the use of force on Douglas, Wood, and other protestors at the intersection of Lincoln and Colfax between 6:00 and 8:00 p.m. on May 30, 2020.

182. On occasion, Douglas saw a person throw a water bottle in the direction of the skirmish line, but it was almost always in response to unprovoked, unwarned, and unjustified use of force by the officers.

183. The use of force on Douglas and Wood on May 30, 2020 between 6:00 and 8:00 p.m. on May 30, 2020 at the intersection of Lincoln and Colfax was consistent with DPD policy.

184. No officers were disciplined for the use of force on Douglas or Wood on May 30, 2020 between 6:00 and 8:00 p.m. at the intersection of Lincoln and Colfax.

May 31, 2020

185. On May 31, 2020, Douglas and Wood joined other protestors in peacefully marching around the downtown area.

186. After curfew, Douglas and Wood marched past the District 6 police station on Colfax. They had managed to march past the station without incident, but they saw that police used chemical munitions and “less-lethal” weapons on protestors in the march behind them. Douglas and Wood continued marching.

187. Between approximately 9:30 to 9:45 p.m., Douglas and Wood marched with hundreds of others in front of the Basilica on Colfax between Pennsylvania and Logan. They were stopped by a line of Aurora police and JCRS officers that had formed a skirmish line on Pennsylvania, at the direction of Commander Phelan:



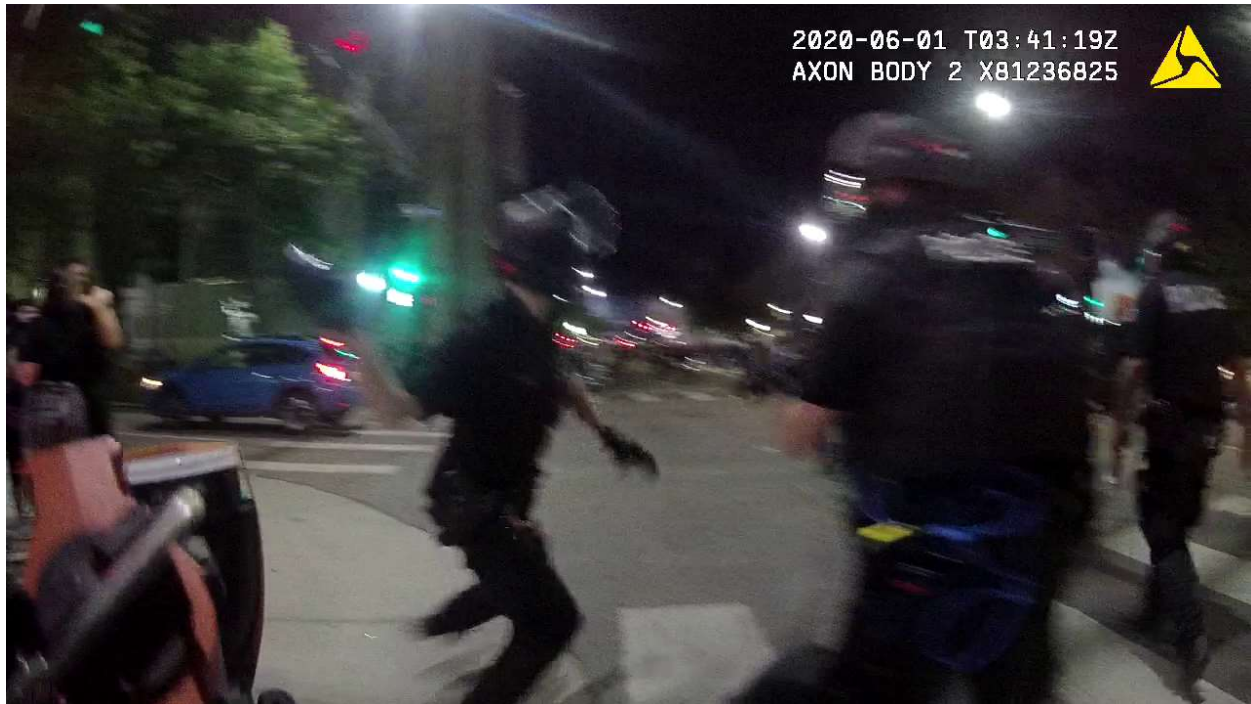
188. As hundreds of protestors gathered in the block of Colfax between Logan and Pennsylvania, a contingent of DPD officers, led by Lt. Williams, formed a line with their bodies and vehicles from the west, at Logan. This, too, was done at the direction of Commander Phelan.

189. Douglas and Wood were in the group of protestors in front of the Basilica at this time.

190. Douglas, Wood, and the other protestors were largely trapped between the Aurora police and JCRS officers on the east, the DPD officers on the west, a tall, spiky wrought-iron fence on front of the Basilica and its grounds on the north, and large buildings to the south.

191. Commander Phelan had ordered the Aurora officers to push protestors west on Colfax from Washington to Pennsylvania, while simultaneously ordering Lt. Williams to push protestors east on Colfax from Grant to Logan.

192. Indiscriminately and without warning or orders, the Denver, Aurora, and JCRS officers shot tear gas, flashbang grenades or other explosive devices, and PepperBalls into the crowd from both directions. This is one of the DPD officers throwing gas or other munition from Colfax and Logan:



193. It was difficult for protestors to escape, although many ran down a narrow alleyway to the south or around the corners of Logan and Pennsylvania to the north.

194. The area was very crowded with protestors, and there was a significant amount of tear gas and other "less-lethal" weapons being used on protestors from both police sides:



195. In an attempt to escape the gas and explosives, Douglas and Wood decided to climb the Basilica's wrought-iron fence, although it seemed dangerous. Wood's shoelace got stuck at the top of the fence. Douglas tried to help her by untying her shoelace. DPD officers shot Wood several times while she was stuck at the top of the fence trying to get down.

196. Commander Phelan watched the events at the Basilica unfold on HALO cameras in real time.

197. This kettling of and use of force on protestors was directed by Commander Phelan. Phelan's orders were carried out by officers under his command.

198. There was no lawful justification for the officers' use of force described in the preceding paragraphs.

199. The actions of the APD and JCRS officers between 9:30-9:45 p.m. on May 31, 2020, on Colfax between Logan and Pennsylvania were consistent with the policies, practices, and customs of Defendant Denver.

200. The actions of the APD officers between 9:30-9:45 p.m. on May 31, 2020, on Colfax between Logan and Pennsylvania were consistent with the policies, practices, and customs of Defendant Aurora.

201. Officers' use of force on protestors on May 31, 2020 between 9:30-9:45 p.m. on May 31, 2020 on Colfax between Logan and Pennsylvania was consistent with DPD policy.

202. Aurora officers' use of force on protestors on May 31, 2020 between 9:30-9:45 p.m. on May 31, 2020 on Colfax between Logan and Pennsylvania was consistent with Aurora policy.

203. Officers' use of force on Douglas and Wood on May 31, 2020 between 9:30-9:45 p.m. on May 31, 2020 on Colfax between Logan and Pennsylvania was consistent with DPD policy.

204. No DPD officers were disciplined for the use of force on Douglas or Wood on May 31, 2020 between 9:30-9:45 p.m. on May 31, 2020 on Colfax between Logan and Pennsylvania.

205. No DPD officers were disciplined for the use of force on protestors on May 31, 2020 between 9:30-9:45 p.m. on Colfax between Logan and Pennsylvania.

206. At no time did Douglas or Wood throw anything, commit any act of violence or property destruction, or commit any act that would have justified the use of force on them.

207. On one or more days when they attended the protests and during the events described above, Douglas and Wood experienced tear gas and/or pepper spray or other aerosolized chemicals, which caused coughing, difficulty breathing, irritation and burning in the eyes, nose, throat, and mouth and a burning sensation on the skin. Wood also experienced severe cramping and problems with her menstruation as a likely result of the excessive exposure to tear gas.

Plaintiffs Tejas Cousik, Emma Smedberg, and Abigail Zinman

208. Plaintiffs Tejas Cousik, Emma Smedberg, and Abigail Zinman attended the protests on May 28, 30, and/or 31, 2020. They attended to support the message of Black Lives Matter.

May 30, 2020

209. Between approximately 4:30-5:00 p.m., Zinman went to the Target near 16th Street between California and Welton. She saw a line of police officers in riot gear lined up against a building.

210. Protestors gathered in front of the officers to exercise their First Amendment rights. The protestors were peaceful.

211. Zinman walked over towards the crowd of protestors.

212. Suddenly, DPD officers started shooting projectiles that made a “pop, pop” sound, which were PepperBall guns.

213. The officers did not give any warnings or any orders (including any dispersal orders) before using force on the protestors. Nor was there any apparent provocation for the officers' use of force.

214. Zinman did not see any protestors throw anything or commit any acts of violence or property destruction.

215. In the early evening on May 30, 2020, Zinman attended the protest at the southeast corner of Lincoln and Colfax by the Capitol.

216. At approximately 5:30 p.m., a large number of police officers in riot gear walked from the Capitol to the north side of Colfax and Lincoln and joined other officers at Civic Center station.

217. There were many protestors, probably hundreds, at the time, in and around the area of Lincoln and Colfax. Some protestors were chanting; others were holding signs. The protestors were peaceful.

218. At about 5:46 p.m., without giving any audible warnings or dispersal orders, and without any apparent provocation, officers gassed and shot PepperBalls at peaceful protestors, including Zinman.



219. Zinman did not see any protestors throw anything or commit any act of violence or property destruction.

220. Zinman stayed in the area of the Capitol lawn near the intersection of Lincoln and Colfax.

221. At some point after this, Zinman met up with Cousik and Smedberg.

222. During this time, from about 6:00 to 8:00 p.m., DPD officers threw tear gas and explosive devices such as flashbang grenades, pepper sprayed and shot projectiles at the protestors who were on Lincoln. This happened repeatedly from the early evening through curfew at 8:00 p.m.

223. Zinman saw officers shoot protestors with PepperBalls. There was no apparent provocation or justification for this use of force.

224. Zinman, Cousik, and Smedberg were gassed one or more times during the time period from 5:30 to 8:00 p.m. on May 30, 2020.

225. The use of force on Cousik, Smedberg, and Zinman on May 30, 2020 between 5:30 and 8:00 p.m. at or around the intersection of Lincoln and Colfax was consistent with DPD policy.

226. No DPD officers were disciplined for the use of force on Cousik, Smedberg, or Zinman on May 30, 2020 between 5:30 and 8:00 p.m. at or around the intersection of Lincoln and Colfax.

May 31, 2020

227. On May 31, 2020, Cousik, Smedberg, and Zinman gathered in Cousik's apartment and made signs for the protest.

228. Cousik, Smedberg, and Zinman joined the protests at the Capitol. They attended the protests from approximately 6:00 or 7:00 p.m. to 11:00 or 11:30 p.m.

229. The police used a significant amount of tear gas and projectiles on them and the other protestors that evening.

230. Sometime after curfew, Cousik, Smedberg, and Zinman marched with other protestors east on Colfax.

231. At approximately 9:30 p.m., Cousik, Smedberg, and Zinman were with a large group of protestors on Colfax, in front of the Basilica between Logan and Pennsylvania. They were marching east.

232. They encountered a line of police officers on Pennsylvania. They stopped.

233. Out of nowhere, more police officers appeared behind them on Logan.

234. The officers shot tear gas and projectiles at them and other protestors from both sides. Cousik, Smedberg, and Zinman had been marching peacefully, and then, all of a sudden, there were explosions coming from the police.

235. Cousik, Smedberg, and Zinman were trapped between the two lines of officers in front of the Basilica. The police used heavy amounts of tear gas on them.

236. The officers gave no warnings, announcements, or dispersal orders before using force on them.

237. Cousik, Smedberg, and Zinman did not see any protestors throwing anything at the officers or committing any act of violence.

238. It was difficult to escape the tear gas and explosives. Cousik, Smedberg, and Zinman were panicked and terrified. People were screaming. People were trying to climb the wrought-iron fence around the grounds of the Basilica, and Cousik saw a girl hurt her arm.

239. At first, Zinman tried to climb the fence, but she could not make it. Cousik, Smedberg, and Zinman decided to go down the narrow alleyway on the south side of the street to escape, even though they feared being trampled because there were so many protestors.

240. This incident was very scary and dangerous.

241. The use of force on Cousik, Smedberg, and Zinman, on May 31, 2020 between 9:30-9:45 p.m. on Colfax between Logan and Pennsylvania was consistent with DPD policy.

242. No DPD officers were disciplined for the use of force on Cousik, Smedberg, or Zinman on May 31, 2020 between 9:30-9:45 p.m. on Colfax between Logan and Pennsylvania.

243. After the kettling incident, Cousik, Smedberg, and Zinman got rid of their protest signs, because it was apparent the police were targeting protestors and they did not want to be targeted by the police.

244. Later that evening, between approximately 10:00 to 10:20 p.m., Cousik, Smedberg, and Zinman attended the protest at the intersection of 13th Avenue and Delaware Street or 13th Avenue and Cherokee Street.

245. There was a line of police officers there and approximately 100 or so protestors, including themselves. The protestors were kneeling, chanting, holding signs, and/or had their hands up in the air.

246. The police officers in riot gear stood there silently.

247. JCRS officers and DPD officers were present.

248. At one point, former Director of Safety Murphy Robinson was present.

249. Former Director of Safety Murphy Robinson was one of Defendant Denver's final policymakers with respect to the DPD.

250. Robinson was aware of and approved the use of force by officers at 13th Avenue and Delaware Street or 13th Avenue and Cherokee Street on May 31, 2020 between approximately 10:00 and 10:20 p.m.

251. JCRS officers, as with all officers providing mutual aid during the protest, acted under the command and at the direction of Commander Phelan.

252. Commander Phelan authorized the use of chemical munitions and “less-lethal” weapons on May 31, 2020 between approximately 10:00 and 10:20 p.m. at 13th Avenue and Delaware Street or 13th Avenue and Cherokee Street.

253. Suddenly, without giving any audible warnings or orders, the officers began shooting projectiles, including PepperBalls and beanbags filled with lead pellets. Officers also threw tear gas at protestors.

254. Smedberg was hit with one or more police projectiles, including what appeared to be a beanbag round from a “less-lethal” shotgun.

255. Protestors ran. Someone was hit in the head with a projectile.

256. Zinman, Smedberg, and Cousik hid behind a metal sign. They could hear the projectiles hitting the sign.

257. Zinman saw a girl hit in the shin who could not walk. She also saw a guy who had been hit in the head by his eye and had a large welt.

258. Smedberg saw someone on the ground who had been badly injured by a projectile. The crowd of protestors headed south and Smedberg saw someone else on the ground who was screaming in pain, and there was a crowd of people trying to help them. Smedberg also saw someone on the ground bleeding from the head from a projectile.

259. Officers’ use of force on protestors at 13th Avenue and Delaware Street or 13th Avenue and Cherokee Street on May 31, 2020 between approximately 10:00 and 10:20 p.m. was consistent with DPD policy.

260. Officers' use of force on Smedberg, Zinman, and Cousik at 13th Avenue and Delaware Street or 13th Avenue and Cherokee Street on May 31, 2020 between approximately 10:00 and 10:20 p.m. was consistent with DPD policy.

261. No DPD officers were disciplined for any use of force on protestors at 13th Avenue and Delaware Street or 13th Avenue and Cherokee Street on May 31, 2020 between approximately 10:00 and 10:20 p.m.

262. No DPD officers were disciplined for any of force on Zinman, Smedberg, or Cousik at 13th Avenue and Delaware Street or 13th Avenue and Cherokee Street on May 31, 2020 between approximately 10:00 and 10:20 p.m.

263. Police officers regularly gassed protestors, including Cousik, Smedberg, and Zinman, whenever they saw them that evening.

264. At no time did Cousik, Smedberg, or Zinman throw anything, commit any act of violence or property destruction, or commit any act that would have justified the use of force on them.

265. On one or more days when they attended protests and during the events described above, Cousik, Smedberg, and Zinman experienced tear gas and/or pepper spray or other aerosolized chemicals, which caused coughing, difficulty breathing, irritation and burning in the eyes, nose, throat, and mouth and a burning sensation on the skin.

Plaintiff Brianne Sanchez

266. Plaintiff Brianne (“Breezy”) Sanchez attended the protest on May 28 and 30, 2020. She attended to protest police brutality against Black and brown people.

May 28, 2020

267. On May 28, 2020, Sanchez marched with protestors in the downtown area and north towards I-25.

268. Some protestors made their way onto I-25. Sanchez was standing on the pedestrian bridge over I-25 when police arrived and began shooting at protestors.

269. Protestors left the area and began walking back towards Confluence Park.

270. Around Platte Street and 16th Street, protestors stood there. Sanchez heard a DPD officer say something to the effect of, “If they don’t start moving, just pop ’em.” The officers began shooting PepperBalls at the protestors without warning or any orders. Many people were injured.

271. Sanchez marched back to the Capitol with other protestors. At 14th Avenue and Sherman Street, there was a line of DPD officers on 14th Avenue.

272. Sanchez and the other protestors stayed there about another hour, chanting things like, “Hands up, don’t shoot,” and “I can’t breathe.” Some protestors were kneeling and/or holding signs.

273. At about 9:10 p.m., DPD officers tear gassed the entire crowd, without provocation. They also shot PepperBalls at the protestors. Sanchez did not see anyone throw anything or get aggressive with the police.

274. The officers gave no audible warning or orders.

275. At least one DPD supervisor, Sgt. Rick Beall, knew that protestors could not hear any announcements.

May 30, 2020

276. On May 30, 2020, Sanchez went to the Capitol at around 5:00 or 6:00 p.m. to protest. She was in and around the area near the Capitol, on Lincoln Street and Liberty Park.

277. As described above, during the couple hours before curfew at 8:00 p.m. that day, there was a line of officers on Colfax, facing south towards Lincoln and the park.

278. On numerous occasions in the hours before curfew at 8:00 p.m., DPD officers threw flashbang grenades, tear gas, or other chemical munitions into the peaceful crowd of protestors without warning or justification and otherwise indiscriminately used their “less-lethal” weapons on protestors without warning or justification.

279. Sanchez did not see any apparent provocation for the use of force. Most of the time, the protestors in front of the crowd had their hands up. She did not see any protestors throw anything.

280. About an hour or more before curfew, Sanchez was hit twice in the back of her leg with PepperBalls, as she was walking away from the officers.

281. After curfew, the officers in the skirmish line marched forward aggressively.

282. Sanchez walked away from the area towards Broadway. Shortly after curfew, she stopped at her business at 11th Avenue and Broadway to wash the tear gas from her eyes.

283. Sanchez went back out to the protests, to look for her friend who had attended the protest with her. She took her car but could not drive it far because there were too many people. She parked and went looking for her friend on foot.

284. Sanchez walked on Grant Street from 13th Avenue towards 12th Avenue. She encountered a line of police officers. One of the officers, a DPD officer, raised his PepperBall gun and shot her in the leg.

285. The officer gave no warning, announcement, or orders to Sanchez before shooting her without justification.

286. Officers' use of force on Sanchez on May 30, 2020 was consistent with DPD policy.

287. No DPD officers were disciplined for the use of force on Sanchez on May 30, 2020.

288. At no time did Sanchez throw anything, commit any act of violence or property destruction, or commit any act that would have justified the use of force on her.

289. On one or more days when they attended protests and during the events described above, Sanchez experienced tear gas and/or pepper spray or other aerosolized chemicals, which caused coughing, difficulty breathing, irritation and burning in the eyes, nose, throat, and mouth and a burning sensation on the skin. Sanchez also had bruises from being shot with PepperBalls.

Plaintiff Jeremy Hedlund

290. Plaintiff Jeremy Hedlund attended the protest on numerous days in May and June 2020. He attended to protest anti-Black police violence.

291. At times during the protest, Hedlund carried a protest sign.

292. On May 30, 2020, Hedlund was with other protestors in and around the area of the Capitol near Lincoln, Colfax, Broadway, and the park.

293. At one point before curfew, Hedlund stood with other protestors in a group on Lincoln in front of the Capitol.

294. Hedlund and the others were peaceful and chanting.

295. A police officer, believed to be a DPD officer, shot Hedlund in the chest with a projectile. The object was likely a PepperBall.

296. Hedlund did not hear any officers give any warnings, announcements, or dispersal orders prior to the use of force on him.

297. Hedlund did not see anyone throw anything, commit any act of violence or property destruction, or commit any other act that would have justified the use of force.

298. This use of force on Hedlund on May 30, 2020 in the area of Lincoln and Colfax was consistent with DPD policy.

299. No DPD officers were disciplined for the use of force on Hedlund on May 30, 2020 in the area of Lincoln and Colfax.

300. At no time did Hedlund throw anything, commit any act of violence or property destruction, or commit any act that would have justified the use of force on him.

301. On one or more days when he attended protests and during the events described above, Hedlund experienced tear gas and/or pepper spray or other aerosolized chemicals, which caused coughing, difficulty breathing, irritation and burning in the eyes, nose, throat, and mouth and a burning sensation on the skin. The police chemicals also affected him severely because of his asthma. Hedlund also had a big welt that lasted over a week from being shot with the projectile.

Plaintiff Robert Helmick

302. Plaintiff Robert Helmick attended the protest on May 28 and 30, 2020. He attended to support the message of Black Lives Matter and protest police violence against Black and brown people.

May 28, 2020

303. On May 28, 2020, Helmick marched with other protestors east on Colfax.

304. At about 8:30 p.m., at the intersection of Colfax and Washington, Helmick was protesting with a couple hundred other protestors when they were tear gassed without justification. DPD officers also shot PepperBalls at protestors.

305. There were no warnings, announcements or dispersal orders given.

306. Helmick did not see anyone throw anything or commit any act of violence or property destruction that would have warranted the use of force.

307. Commander Phelan authorized the use of chemical munitions on protestors at approximately 8:30 p.m. at Colfax and Washington on May 28, 2020.

308. Helmick marched with other protestors back towards the Capitol.

309. There was a large number of DPD officers at 14th and Sherman. The protestors were peaceful. Helmick and others were chanting.

310. At about 9:10 p.m., without any audible warnings or dispersal orders, officers began throwing tear gas at the crowd. One of the canisters landed approximately 10 feet from Helmick. Officers threw several more canisters at the protestors.

311. Helmick did not have a gas mask or any goggles on. He could not get any air, coughed continuously and felt like he was going to pass out.

312. Helmick did not see anyone throw anything or commit any act of violence or property destruction that would have warranted the use of force.

May 30, 2020

313. On May 30, 2020, Helmick joined the protests at about noon. In the afternoon, he and other protestors marched up and down the 16th Street Mall peacefully.

314. When Helmick got back to the Capitol area later in the afternoon, tear gas was already in the air.

315. At one point, at around 5:00-5:45 p.m. or so, there were DPD Metro/SWAT officers standing at the pavilion area of Civic Center station. A couple people tried to walk up the stairs, but the officers shot them with PepperBalls.

316. At around 5:30-5:45 p.m., many protestors were gathered at Civic Center station protesting the police presence there. At about 5:46 p.m., DPD officers pushed everyone south of Colfax with tear gas and “less-lethal” weapons.

317. At about 7:00 p.m., an hour or so before curfew, Helmick was in the area of Lincoln and Colfax. Officers began throwing more tear gas into the crowd of protestors.

318. Helmick did not see anything that provoked this use of force. He did not hear any announcements, warnings, or dispersal orders.

319. At one point during the couple hours before curfew, Helmick saw a guy get hit in the head with a police projectile. He was knocked unconscious; other protestors went to assist him but they were shot with “less-lethal” weapons. This occurred on Lincoln, in between Colfax and 14th.

320. Helmick saw another protestor with an umbrella get shot by DPD officers with a bunch of PepperBalls, for no apparent reason.

321. About 15 minutes before curfew, Helmick decided to leave the protest and was trying to go home. He was on the steps going across the Capitol lawn near the intersection of Lincoln and Colfax when a DPD officer shot him three times with PepperBalls, once in the shoulder, once in the back of the head, and once in the mouth.

322. Helmick did not hear any warnings, announcements, or dispersal orders given to him before he was shot.

323. At no time did Helmick throw anything, commit any act of violence or property destruction, or commit any act that would have justified the use of force on him.

324. Officers' use of force on Helmick on May 30, 2020 was consistent with DPD policy.

325. No DPD officers were disciplined for the use of force on Helmick on May 30, 2020.

326. On one or more days when he attended protests and during the events described above, Helmick experienced tear gas and/or pepper spray or other aerosolized chemicals, which caused coughing, difficulty breathing, irritation and burning in the eyes, nose, throat, and mouth and a burning sensation on the skin. Helmick also had a swollen lip from being shot in the mouth.

Plaintiff Phillip Lopez

327. Plaintiff Phillip Lopez attended the protest in May 2020. He attended to protest police brutality, violence, and discrimination against Black and brown people and people of color.

May 30, 2020

328. On May 30, 2020, Lopez joined the protest after work, shortly after 7:00 p.m. He went to the area of the Capitol, near Lincoln and Colfax.

329. In that area at that time, as described above, the police had formed a skirmish line across Colfax and was occasionally gassing and shooting "less-lethal"

weapons into the crowd of protestors without justification, warnings or announcements.

330. Shortly after curfew, Lopez was peacefully protesting, occasionally on his knees and/or with his hands up. He was on Broadway at this time.

331. After curfew, the police moved forward to push protestors south, away from Colfax.

332. At or around the intersection of 14th Avenue and Broadway, an officer shot Lopez in the knee with a projectile, believed to be from a 40 mm launcher. In any event, the object that hit Lopez was bigger than a PepperBall.

333. This caused pain and a laceration on Lopez's knee. To this day, a scar is still visible.

334. Lopez heard no warnings or orders before being shot.

335. This use of force on Lopez on May 30, 2020 was consistent with DPD policy.

336. No DPD officers were disciplined for any use of force on Lopez on May 30, 2020.

337. At no time did Lopez throw anything, commit any act of violence or property destruction, or commit any act that would have justified the use of force on him.

338. On one or more days when he attended protests and during the events described above, Lopez experienced tear gas and/or pepper spray or other

aerosolized chemicals, which caused coughing, difficulty breathing, irritation and burning in the eyes, nose, throat, and mouth and a burning sensation on the skin.

Plaintiff Tyson McCormick

339. Plaintiff Tyson McCormick attended the protests on several days in May 2020. He attended to protest police brutality against Black and brown people and support the message of Black Lives Matter.

May 30, 2020

340. On May 30, 2020, McCormick joined the protests in the afternoon or early evening hours. He went to the area of the Capitol near the intersection of Lincoln and Colfax.

341. The police were gassing people long before curfew. There were immense clouds of tear gas in the area of the Capitol.

342. McCormick was in the area of Civic Center station when DPD officers gassed and shot peaceful protestors with Pepperballs without audible warning at about 5:46 p.m.

343. After that, McCormick was generally in the area of the park south of Colfax and in and around the intersection of Lincoln and Colfax. The police regularly and indiscriminately sprayed Pepperballs and threw tear gas into the crowd for no apparent reason and without any apparent justification. McCormick was hit with Pepperballs and gassed repeatedly. He heard no warning, announcements, or dispersal orders.

344. Later that evening, McCormick were walking near Colfax when he saw what appeared to be DPD Metro/SWAT officers. The officers were apparently

investigating something that happened at a store. The officers started shooting Pepperballs at McCormick; they were shooting at anybody walking up the street. There was no justification for this use of force and no warning or dispersal orders given.

345. At one point believed to be that same evening of May 30, 2020, McCormick was near 12th and Broadway or 12th and Lincoln. Officers shot McCormick in the foot with a projectile believed to be from a 40 mm launcher. It appeared to be DPD officers who were shooting from a vehicle. There was no justification or warning given for this use of force.

May 31, 2020

346. On May 31, 2020, McCormick marched east down Colfax with a large number of other peaceful protestors. McCormick marched with the other protestors in order to express his views in support of Black and Brown lives and against police brutality.

347. The march went past the District 6 station at Colfax and Washington. Police shot tear gas and “less-lethal” weapons at the protestors in the march. The use of force on marchers began at approximately 8:30 p.m. and continued for about an hour until the officers moved from their position at Colfax and Washington.

348. APD and JCRS officers formed a skirmish line on Washington, just north of the intersection, facing south.

349. A DPD sergeant, Robert Stack, was embedded with this group of mutual-aid officers.

350. Stack provided guidance and direction from the Command Post (specifically, Commander Phelan) to the APD and JCRS officers.

351. The officers fired tear gas and “less-lethal” weapons repeatedly at the crowd. There were peaceful protestors kneeling and chanting in the intersection.

352. APD officers had launchable gas canisters that they were shooting out of 40mm launchers.

353. JCRS officers did not have launchable gas canisters that they were shooting out of launchers.

354. McCormick stood in the intersection peacefully protesting.

355. Between approximately 8:42-8:52 p.m., McCormick was near the Sliceworks at Colfax and Washington when APD Officer Joshua Winters, who was standing in the skirmish line, intentionally shot him in the head with a projectile.

356. Officer Winters intentionally shot McCormick in the head as McCormick walked towards the Sliceworks.

357. Based on video evidence newly produced by Defendant Aurora, Officer Winters intentionally shot McCormick in the head with a “less-lethal” (bean bag) shotgun because McCormick had approached a tear gas canister and either moved or attempted to move it away from protestors.

358. There was no warning or announcement given, including by Officer Winters, before this use of force.

359. None of McCormick’s actions were violent, destructive, or posed any threat to the safety of any officer or anyone else.

360. Prior to the protests, Defendant Aurora and Aurora supervisors had trained Officer Winters and other APD officers to shoot their “less-lethal” weapons at people who interfered or attempted to interfere with their chemical munitions (such as gas canisters) in any way, including by touching, moving, kicking, covering up, or even approaching the munitions.

361. Defendant Aurora had also trained Officer Winters and other APD officers to shoot their “less-lethal” weapons at people without warning or announcements before the use of force.

362. Defendant Aurora’s policy before and at the time of the protests permitted their officers to shoot their “less-lethal” weapons at people who interfered or attempted to interfere with their chemical munitions (such as gas canisters) in any way, including by touching, moving, kicking, covering up, or even approaching the munitions.

363. Defendant Aurora’s policy before and at the time of the protests permitted their officers to shoot their “less-lethal” weapons at people without warning or announcement.

364. On May 31, 2020, Officer Winters acted pursuant to Aurora policy, procedure, and training when he shot McCormick.

365. McCormick did not commit any act that justified being shot in the head with a “less-lethal” shotgun round or any other projectile.

366. McCormick felt the object hit him in the left side of his head. It stunned him for a few moments, and then he blacked out and dropped to the ground.

367. When McCormick came to, there was a cloud of gas around him, and street medics were dragging him into the parking lot behind Sliceworks.

368. The cloud of gas around McCormick was caused by one or more tear gas canisters that officers in the skirmish line had thrown at or towards McCormick when he was laying on the ground.

369. Blood ran down McCormick's face and created a large pool of blood on the ground:



370. When McCormick was on the ground, other protestors approached the skirmish line of officers and asked for help for a person with a severe head injury. No officers helped McCormick or provided any medical aid whatsoever.

371. Officer Winters provided no help and made no attempt to provide any help to McCormick even though he had just shot McCormick in the head.

372. McCormick was eventually taken to the hospital, where they stitched his wound closed. This is what his wound looked like at the hospital:



373. Someone gave McCormick a ride home from the hospital. He threw up because he had a severe concussion.

374. McCormick had piercing ringing in his ears. He could not hear out of his left ear for 48 hours. He did not fully regain his hearing out of that ear until a few weeks later. He also had severe swelling on that side of his head for weeks afterwards. He had difficulty moving his jaw.

375. Shooting someone in the head with a “less-lethal” shotgun is never justified.

376. Alternatively, shooting someone in the head with a “less-lethal” shotgun is not justified unless the circumstances call for use of deadly force.

377. At no time did McCormick commit any act that would have justified the use of deadly force on him by shooting him in the head with a “less-lethal” weapon.

378. On one or more days when he attended protests and during the events described above, McCormick experienced tear gas and/or pepper spray or other aerosolized chemicals, which caused coughing, difficulty breathing, irritation and burning in the eyes, nose, throat, and mouth and a burning sensation on the skin.

Plaintiff James Williams

379. Plaintiff James Williams attended the protests on multiple days in May, June and other months in the summer of 2020. He attended to protest the murder of George Floyd and to protest police violence and brutality against Black and brown people.

May 28, 2020

380. On May 28, 2020, Williams joined the protest with thousands of other protestors. He went to the area of the State Capitol.

381. At one point after it got dark, he was standing on Colfax in front of the north side of the Capitol. He was peacefully protesting.

382. DPD officers unleashed tear gas and flashbang grenades or other explosive devices. They also indiscriminately shot and assaulted people with PepperBalls and other launched projectiles.

383. The officers did not give any or any audible warnings, announcements, or dispersal orders.

384. Overwhelmed with shock and fear, Williams left the area.

May 29, 2020

385. On May 29, 2020, Williams left work and went to the area of the Capitol to protest peacefully with a friend.

386. By the time it started getting dark, the police had turned the area into what seemed like a battle zone filled with tear gas and chaos. The police were shooting peaceful protestors indiscriminately with their “less-lethal” weapons and tear gas.

387. Williams and his friend were gassed and shot at with PepperBalls.

388. Williams managed to get his friend to safety back at his friend’s home.

389. Again, the officers did not give any or any audible warnings, announcements, or dispersal orders.

390. Williams had been protesting peacefully and did not commit any act that would have justified this use of force.

May 30, 2020

391. On May 30, 2020, Williams joined the protest again, in the area of Civic Center.

392. He marched and protested peacefully with other protestors and gave a speech to the crowd.

393. Again, in and around Civic Center and the Capitol, police officers indiscriminately gassed protestors, shot at them with PepperBalls for no apparent reason, and threw flashbang grenades or other explosive devices at them.

394. Williams had been protesting peacefully and did not commit any act that would have justified this use of force.

395. There were many other days that Williams protested peacefully in Denver and the police used unlawful force on him, in order to deter him from exercising his rights.

396. At no time did Williams commit any act of violence or property destruction or commit any act or throw anything that would have justified the use of force on him.

397. On one or more days when he attended protests and during the events described above, Williams experienced tear gas and/or pepper spray or other aerosolized chemicals, which caused coughing, difficulty breathing, irritation and burning in the eyes, nose, throat, and mouth and a burning sensation on the skin. He was also impacted with Pepperballs and/or other projectiles shot by the police.

Damages

398. As a direct and proximate cause of the conduct described herein, Plaintiffs were denied their constitutional rights as stated herein, and suffered damages, including but not limited to, mental and emotional distress, physical

injuries and bodily harm, pain, fear, humiliation, embarrassment, discomfort, and anxiety, and other damages.

399. Defendants' and DPD's actions were committed with conscious or reckless disregard for, and deliberate indifference to, Plaintiff's rights.

**Defendant Denver's Unconstitutional
Policies, Practices, and Customs**

400. Defendant Denver has engaged in repeated, widespread violations of law, as outlined above, over the course of several nights, shutting down the exercise of First Amendment activities through the use of indiscriminate and unreasonable force against thousands of protestors; imposing citywide curfews without accommodating, or even attempting to accommodate, the right to peaceable assembly and protest, and specifically targeting protestors with their curfew; at times dispersing lawful and peaceful assemblies without warning and without providing both directions, means, and opportunity to disperse before taking aggressive police action; hitting at least hundreds of protestors with "less-lethal" weapons and/or tear gassing or pepper spraying them; selectively enforcing the curfew against protestors by arresting them for violation of an unlawful curfew and thereby placing them at great risk of exposure to COVID-19;¹ and harassing, intimidating, and/or using force on individuals attempting to record or document police activity in public. In conjunction with a history of protest-related constitutional violations, Defendant Denver's repeated widespread and unlawful

¹ The Van Cise-Simonet Detention Center, where arrestees were taken, was the site of one of the largest COVID-19 outbreaks in the country.

acts over several nights and involving many locations constitute an unlawful custom and policy of violating protest participants' constitutional rights.

401. Defendant Denver had a policy, practice, or widespread custom of failing to give dispersal or audible dispersal orders prior to the use of force at protests.

402. Defendant Denver had a policy, practice, or widespread custom of inappropriate and indiscriminate use of "less-lethal" weapons including pepper spray, chemical munitions, explosive devices, 40 mm launchers, PepperBalls, and/or other KIPs.

403. Defendant Denver failed to train its officers in the constitutional responses to peaceful demonstrations, despite the history of such violations in the past and despite the obvious need for such training. The recurrence of the same violations with respect to these protestors indicates an intentional refusal to preserve the constitutional rights of protestors.

404. Defendant Denver failed to adequately train its officers in the use of "less-lethal" weapons, including 40 mm launchers, PepperBalls, and chemical munitions. The training provided by Defendant Denver was outdated, insufficient, and inconsistent with generally accepted standards and practices. Defendant Denver had knowledge of the importance of training on the proper use of "less-lethal" weapons, and its failure to adequately train officers in the use of these weapons constituted deliberate indifference.

405. In its report completed after an investigation into the use of force by DPD during the protests, the Office of Independent Monitor concluded that, during the protests, Defendant Denver allowed some DPD officers who were not trained or certified in the use of “less-lethal” weapons to use those weapons against protestors.

406. Defendant Denver failed to provide *any training* whatsoever to its officers in the use of flashbang grenades or Stinger grenades. These explosive devices can cause serious injuries. They are not intended for the direct application of force against a person and should not be thrown directly at a person. Despite this, flashbang grenades and Stinger grenades were used repeatedly during the protests, frequently thrown into crowds. Defendant Denver’s failure to train its officers on the use of flashbang grenades and Stinger grenades directly caused injury to protestors.

407. Defendant Denver failed to provide any training to the law enforcement officers from outside agencies and did not conduct any joint training exercises with the outside agencies, which was necessary in order to ensure that outside law enforcement officers would not violate the constitutional rights of citizens in Denver.

408. Defendant Denver failed to adopt adequate policies in the constitutional responses to peaceful demonstrations, despite the history of such violations in the past and despite the obvious need for adequate policies. The recurrence of the same violations with respect to these protestors indicates an intentional refusal to preserve the constitutional rights of protestors.

409. Defendant Denver failed to adopt *any* policies whatsoever on the use of flashbang grenades or Stinger grenades. In light of the serious and obvious risk of bodily injury and danger posed by flashbang grenades or Stinger grenades, Denver's failure to provide any policies or training on their use posed an obvious risk of violation of the constitutional rights of protestors.

410. Defendant Denver's failure to provide adequate training or policies that were obviously needed constituted deliberate indifference.

411. Under DPD Chief of Police Paul Pazen, the prevailing attitude was that training is not important.

412. For instance, the DPD and Defendant Denver have been called on numerous times dating back at least to 2011 to investigate its use of PepperBalls and other chemical agents against protestors.

413. After Denver police fired PepperBalls at peaceful protestors on October 29th, 2011 during the Occupy Denver demonstrations in Civic Center Park, Defendant Denver received several complaints and conducted an internal debriefing.

414. Despite receiving notice of the DPD's unconstitutional actions, Defendant Denver and DPD deliberately chose not to conduct any further review of the department's less-than-lethal force policy, despite the patently unlawful way in which PepperBall guns had been used against protestors and against the recommendation of the Office of the Independent Monitor, which described the

decision not to examine the incident and the underlying policies as a “missed opportunity.”

415. Despite receiving citizen complaints about DPD officers’ excessive use of force during protests in the past, Defendant Denver has not disciplined any officer for their behavior at prior protests in at least the last five years.

416. Defendant Denver’s policy, practice, and custom of authorizing officers to use “less-lethal” weapons to control and suppress protests was the moving force behind the violations of Plaintiff’s constitutional rights.

417. These violations are also a direct result of Defendant Denver’s use of the services of law enforcement officers from other jurisdictions, who were also authorized to use “less-lethal” weapons to control and suppress protests.

418. Defendant Denver’s policy was to allow the law enforcement officers from outside jurisdictions providing mutual aid to follow their own use of force policies and use their own weapons, even if their own weapons were not approved for use by DPD officers.

419. The use of force policies of JCRS were “in line with DPD’s Use of Force Policy.”

420. The use of force policies of APD were consistent with DPD’s use of force policy.

421. Additionally, Defendant Denver approved and “verified” the use of the “less-lethal” weapons used by JCRS, including beanbag shotguns, Arwen rubber ball grenades, and Stinger grenades.

422. Defendant Denver and its final policymakers acted with deliberate indifference to the constitutional rights of protestors by authorizing, both explicitly and implicitly, the use of “less-lethal” force against protestors who do not pose any safety threat; by failing to properly train, supervise, and discipline officers regarding the proper use of force against protestors; by failing to rectify the unconstitutional custom of officers using “less-lethal” force to control and suppress demonstrations; and by failing to provide adequate policies. This constituted a conscious choice by Defendant Denver not to properly train, supervise, discipline, rectify, or provide adequate policies on these issues.

423. Moreover, Defendant Denver is responsible for the actions of any non-DPD officers whose services were used during the protests. By using those services, Defendant Denver was required to ensure that all officers complied with civilians’ constitutional rights.

424. Chief Pazen was fully knowledgeable and apprised of the actions of DPD officers described above and, upon information and belief, was on site on one or more days of the protest, observing this DPD operation, without repudiating or stopping the actions of DPD officers, thereby ratifying them.

425. DPD operated under the Incident Command System during the protests. Commander Phelan was the Incident Commander throughout the protests, and as such, no action was taken during the protests without being directed or authorized by Phelan

426. Moreover, on May 29, 2020, Mayor Michael Hancock and Chief Pazen publicly praised DPD officers for their “great restraint” and “tremendous restraint” during protests in Denver and said that the actions of the DPD in the use of “less-lethal” weapons against protestors was proper.

427. The actions of and use of force by DPD officers and those of mutual-aid officers during the protests were approved by the DPD Internal Affairs Bureau.

428. The actions of and use of force by DPD officers and those of mutual-aid officers during the protests were deemed by DPD’s final policymakers to be consistent with DPD policy, practice, and custom.

429. Thus, Defendant Denver, through its final policymakers, ratified the conduct of the DPD officers.

430. This caused the violence and misconduct by DPD officers, including those who shot or gassed or otherwise used force on Plaintiffs, to continue that day and in the days after the Mayor and the Chief of Police made these comments.

431. Defendant Denver’s final policymakers received ample notice that officers were using “less-lethal” force against protestors to control and suppress demonstrations in the absence of any imminent threat to safety, including 150 complaints about the DPD in one 72-hour period, and widely publicized videos and firsthand accounts circulated through the local, state, and international press.

432. Of the approximately 123 citizen complaints regarding officer use of excessive force during the protests, Defendant Denver disciplined only three officers and fired one probationary officer.

433. In addition, Defendant Denver’s policy at the time of the protests was that officers were not required to complete use of force reports after using “less-lethal” weapons at a protest. During the protests, DPD officers believed that they were not required to complete use of force reports accounting for their use of force against civilians. It was not until *weeks* later, after a lawsuit was filed against the DPD in *Abay v. City and County of Denver*, that the DPD command staff at the highest levels ordered DPD commanders and administrative lieutenants to have their officers complete use of force reports documenting their use of “less-lethal” weapons.

434. Defendant Denver knew and understood, prior to the protests, that timely and complete use-of-force reporting is essential for officer accountability and transparency, as well as organizational credibility. Defendant Denver’s knowledge of this is reflected in the DPD Operations Manual, which sets forth detailed use-of-force reporting requirements during day-to-day policework. Despite this, Defendant Denver inexplicably applied a different policy to protests.

435. Defendant Denver’s failure to require timely use-of-force reporting allowed DPD officers to escape accountability for use of excessive force during the protests. Officers were aware during the protests that they would not have to account for their use of force, and they were not required to write use of force reports or officer statements after the fact until weeks later, when their memories of the events were no longer fresh.

436. Defendant Denver did not have a written policy that specifically governed the use of body-worn cameras (“BWC”) during the protests. In fact, DPD’s policy and practice was that officers were not required to activate their BWC during the protests. As a result, many officers did not activate their BWC, including during events when officers used excessive force on protestors, including Plaintiffs.

437. Defendant Denver failed to adequately prepare for the May and June 2020 protests.

438. Defendant Denver failed to adequately supervise its officers, as observed by DPD Captain Sylvia Sich in her interview with the Office of Independent Monitor after the 2020 protests.

439. The violations of Plaintiffs’ constitutional rights were a direct result of Defendant Denver’s unconstitutional policies, practices, or widespread customs.

Defendant Aurora’s Unconstitutional Policies, Practices, and Customs

440. Defendant Aurora failed to adequately train its officers in the constitutional responses to peaceful demonstrations.

441. Defendant Aurora failed to adequately train its officers in the use of “less-lethal” weapons, including 40mm launchers, launchable gas, bean bag (12 gauge) shotguns, Stinger grenades, and chemical munitions. Defendant Aurora did not train its officers on how to properly use “less-lethal” weapons, including weapons so dangerous that even DPD did not use them (such as bean bag (12 gauge) shotguns and launchable gas).

442. Specifically, Defendant Aurora’s training materials did not provide *any instruction* to its officers on the circumstances when use of “less-lethal” weapons (including 40 mm launchers, launchable gas, bean bag (12 gauge) shotguns, or explosives such as Stinger grenades) would be appropriate.

443. The training provided by Defendant Aurora (which was taught in-house) was inordinately focused on crowd control (as opposed to crowd management) and was outdated, insufficient, and inconsistent with generally accepted standards and practices.

444. Defendant Aurora’s training materials on crowd management contained almost no coverage of any crowd management principles or techniques. Defendant Aurora did not train its officers on any principles of crowd psychology, how to deescalate conflict and avoid escalation of conflict, how to engage in dialogue with protestors before, during or after a protest, or how to facilitate and protect protestors’ First Amendment rights. Defendant Aurora did not train officers on how to differentiate between individuals in a crowd who might be engaged in violent or criminal activity and those who were behaving peacefully and lawfully.

445. Instead of providing guidance to officers on the circumstances when use of certain “less-lethal” weapons was appropriate, Defendant Aurora’s training focused on the donning and doffing of gas masks and crowd control tactics such as skirmish line formation.

446. Defendant Aurora's training emphasized officer safety with no consideration given to crowd, protestor or public safety, and it emphasized the use of munitions.

447. Defendant Aurora did not have any training materials on the proper use of launchable gas, 40 mm launchers, chemical munitions, or explosive devices such as Stinger grenades.

448. In fact, Defendant Aurora's own designated witness on training has admitted under oath that Aurora's training materials do not provide information about the circumstances under which officers are allowed to use force during a protest, what type of force is permitted in response to particular circumstances, or what specific weapons to use in what circumstances.

449. Defendant Aurora had knowledge of the importance of training on the proper use of "less-lethal" weapons, and its failure to adequately train officers in the use of these weapons constituted deliberate indifference.

450. Defendant Aurora knew that its "less-lethal" weapons could cause serious bodily injury or death, and they warned officers about the serious dangers posed by these weapons.

451. Defendant Aurora failed to adopt adequate policies in the constitutional responses to peaceful demonstrations.

452. Defendant Aurora failed to adopt policies on the circumstances under which specific "less-lethal" weapons, such as 40mm launchers, launchable gas,

beanbag shotguns, flashbang grenades, and Stinger grenades, can be used against civilians, including during protests or demonstrations.

453. APD's use of force policy and policy on use of "less-lethal" weapons rely on reprinting Colorado statutes. APD does not provide specific policies on the circumstances under which specific "less-lethal" weapons, such as 40mm launchers, may be used against civilians, including during protests or demonstrations. APD's policies fail to provide adequate and clear guidance to officers on the appropriate use of force and use of "less-lethal" weapons that protects the constitutional rights of citizens.

454. For example, APD's use of force policy for ERT Members (the officers who responded to the protests) states merely that the ERT "expects its members to use force only when necessary and in accordance with Aurora Police Department Directives, State, Federal case and statutory law." This policy provides no guidance to officers on where, when, why, and how they may use force in a protest situation.

455. Similarly, APD's less-lethal devices and weapons policy states only that use of those weapons "is justified in those proper and lawful situations requiring a degree of force greater than that provided with weaponless control techniques." This policy provides zero guidance to officers on what such "proper and lawful" situations would be or where, when, why, and how they may use less-lethal devices and weapons.

456. Defendant Aurora's concern was with justifying its officers' use of force on protestors after-the-fact, not on ensuring that officers would be held accountable for excessive uses of force.

457. Defendant Aurora's policy at the time of the protests was that officers were not required to complete use of force reports after using "less-lethal" weapons at a protest. After the protests, APD supervisors suggested that APD officers write their use of force statements using language that would state that their uses of force were within or consistent with policy. APD officers believed during the protests that they were not required to complete accurate and timely use of force reports accounting for their use of force against civilians.

458. Defendant Aurora knew and understood, prior to the protests, that timely and accurate use-of-force reporting is essential for officer accountability and transparency, as well as organizational credibility. Despite this, they did not require timely and accurate use-of-force reporting for the use of force at the protests.

459. Defendant Aurora's failure to require timely use-of-force reporting allowed APD officers to escape accountability for use of excessive force during the protests. Officers were aware during the protests that they would not have to account for their use of force, and they were not required to write use of force reports or officer statements after the fact until weeks later, when their memories of the events were no longer fresh.

460. Defendant Aurora's policy was not to require activation of BWCs during use of force at protests. Aurora's policy and training on BWCs focused entirely on how to operate the BWCs, not when they must be used. As a result, many officers did not activate their BWC, including during events when officers used excessive force on protestors, including Plaintiffs.

461. Defendant Aurora knew and understood, prior to the protests, that BWC activation during citizen encounters and uses of force is essential for officer accountability and transparency, as well as organizational credibility. Despite this, they did not require BWC activation for uses of force during the protests.

462. The use of force on Plaintiff McCormick on May 31, 2020, between approximately 8:42-8:52 p.m., at the intersection of Colfax and Washington, when McCormick was shot in the head, was consistent with and authorized by the policies, practices, and training of Aurora and APD.

463. The use of force on Plaintiffs Douglas, Wood, Cousik, Smedberg, and Zinman on May 31, 2020, between approximately 9:30-9:45 p.m. on Colfax between Logan and Pennsylvania, was consistent with and authorized by the policies, practices, and training of Aurora and APD.

464. Because Defendant Denver authorized agencies providing mutual aid to utilize their own policies—and because Denver expressly approved APD's weapons—the use of force by the APD officers was also consistent with and authorized by Defendant Denver.

465. Defendant Aurora conducted a review of the use of force by APD officers at the protests and found that all uses of force were authorized by and compliant with the policies and training of Aurora. A detailed analysis of every officer's actions (including their Body-Worn Camera video) was conducted by members of the Force Review Board.

466. Defendant Aurora has not disciplined any APD officers for their use of force during the protests.

467. As a result of the review of the use of force, all APD officers who assisted Denver in policing the protests were recommended by the chief of police for an award (the "Meritorious Service Ribbon") for their conduct and actions during the protests.

468. Defendant Aurora's review included Officer Winters's use of force on protestors on May 31, 2020, and other days of the protest.

469. Officer Winters was not disciplined; to the contrary, he, like the other APD officers, was recommended for an award.

470. The actions of and use of force by APD officers and those of mutual-aid officers during the protests were deemed by APD's final policymakers to be consistent with APD policy, practice, and custom.

471. Thus, Defendant Aurora, through its final policymakers, ratified the conduct of the APD officers.

472. Defendant Aurora’s policy, practice, and custom of authorizing officers to use “less-lethal” weapons to control and suppress protests was the moving force behind the violations of Plaintiffs’ constitutional rights.

473. Defendant Aurora had a policy, practice, or widespread custom of failing to give dispersal or audible dispersal orders prior to the use of force at protests.

474. Defendant Aurora had a policy, practice, or widespread custom of inappropriate and indiscriminate use of “less-lethal” weapons including pepper spray, chemical munitions, explosive devices, 40 mm launchers, and/or other KIPs.

475. Defendants Aurora and their final policymakers acted with deliberate indifference to the constitutional rights of protestors by authorizing, both explicitly and implicitly, the use of “less-lethal” force against protestors who do not pose any safety threat; by failing to properly train, supervise, and discipline officers regarding the proper use of force against protestors; by failing to rectify the unconstitutional custom of officers using “less-lethal” force to control and suppress demonstrations; and by failing to provide adequate policies. This constituted a conscious choice by Defendants not to properly train, supervise, discipline, rectify, or provide adequate policies on these issues.

476. Defendant Aurora was on notice of its officers’ pattern of use of excessive force. For instance, the Colorado Attorney General’s Office (COAG) conducted an extensive investigation into the APD based on data from the years prior to 2020. This report concluded, in relevant part, that:

a. “[T]he Aurora Police Department ... ha[s] a pattern and practice of violating state and federal law. Specifically, we find that Aurora Police has a pattern and practice of ... using excessive force”

b. “Over the course of our investigation, we saw consistent patterns of unlawful behavior by Aurora Police”

c. “We found that Aurora Police has repeatedly engaged in unlawful and unconstitutional uses of force, regularly applying greater force than reasonably warranted by the situation. ... We observed officers using force on individuals who had not committed any crime and presented no danger but who simply refused to comply with orders....”

d. “Aurora Police’s culture leads to the frequent use of force, often in excess of what the law permits. Training is ad hoc and does not address specific needs of the organization as shown by officer behavior. Policies are short on detail or practical guidance, often doing little more than reciting the legal requirements set forth in court cases and applicable statutes or regulations. In short, Aurora Police has failed to create and oversee appropriate expectations for responsible behavior.”

e. “Aurora Police does not meaningfully review officers’ uses of force, relying on formal and informal systems that favor findings that officers followed policy and that hamper candid feedback on how to improve.”

f. Mechanisms to provide accountability for Aurora police officers who use excessive force are deficient, and there is an “overall lack of

transparency” The existing accountability systems “do not work to provide sufficient feedback for Aurora Police on the behavior of its officers. The feedback that does occur is too cumbersome, ad hoc, and diffuse to provide meaningful input to the organization.”

g. “Aurora Police generally approached the use of force with a what-can-be-justified-under-the-outer-limits-of-the-law approach rather than a what-force-is-necessary approach.”

h. The causes of Aurora Police’s use of excessive force include a culture in the APD that emphasized justification for force rather than whether force was lawful and appropriate; use-of-force policy and implementation that focuses on maximum force permitted under law; and inadequate documentation of use of force.

477. These conclusions of the COAG were based on a detailed analysis of internal Aurora Police data reflecting police activity since 2018, two years prior to the protests. This included interviews with APD personnel, such as command staff, union representatives, training academy personnel, and patrol officers; participation in ride-alongs; observation of Force Review Board meetings; observation of community-police meetings; review of over 2,800 use-of-force reports from 2016 to 2020.

478. The COAG also noted that Aurora reported paying over \$7 million in settlements for claims of excessive force and constitutional violations by APD between 2008 and 2018.

479. Defendant Aurora was on notice of its inadequate training, inadequate policies, and widespread custom and practice of excessive use of force within the APD.

480. In addition to the above, there have been numerous incidents of APD use of excessive force in the years preceding the protest, all of which further placed Defendant Aurora on notice of a widespread custom and practice of its officers using excessive force with impunity. This includes: a man who died in December 2018 after APD officers tased him nearly a dozen times, punched and struck him with batons repeatedly, and restrained him face-down using four sets of handcuffs; a man who was shot and killed in March 2019 after experiencing a mental health crisis; a female prisoner who was restrained upside down in the back of an APD patrol car for more than twenty minutes after her arrest in August 2019; the killing of Elijah McClain in August 2019 by APD officers; and a man who was held at gunpoint in March 2020 in the parking structure of a refugee center that he owned and operated.

481. 21CP Solutions, a company that Defendant Aurora engaged to conduct an assessment of the APD's policies, procedures, and operations, reached similar conclusions to the COAG about Aurora's policy and training failures. For instance, 21CP Solutions concluded:

a. APD's policies on use of force and less-lethal weapons "rely on reprinting Colorado statutes," and "[i]n doing so, the Department's policies

fail to address a host of critical concepts, lagging far behind peers and best practices.”

b. APD’s use of force policies are confusing and scattered across different policies provisions in APD’s Directives Manual.

c. APD’s force policies do not define a number of critical terms.

482. The violations of the constitutional rights of Plaintiffs including Plaintiff McCormick, were a direct result of Defendant Aurora’s unconstitutional policies, practices, or widespread customs.

Count I: 42 U.S.C. § 1983 – First Amendment

483. Plaintiffs incorporate by reference each of the paragraphs in this Complaint as if restated fully herein.

484. In the manner described more fully above, Defendants violated Plaintiffs’ rights under the First Amendment of the United States Constitution.

485. In the manner described more fully above, Defendants violated Plaintiffs’ First Amendment rights when it attempted to control and break up the peaceful protests by using “less-lethal” weapons on Plaintiffs without warning, dispersal orders, adequate time to disperse, or any lawful justification whatsoever. These actions were undertaken in order to discourage, suppress, and retaliate against the exercise of Plaintiffs’ First Amendment rights.

486. Furthermore, the right to gather, receive, record, and disseminate information is grounded in the Free Speech Clause of the First Amendment, as well as the Petition Clause, if the purpose of gathering, receiving, or recording the

information is to use it to petition the government for redress of grievances, and the Free Press Clause, if the purpose of gathering, receiving, or recording the information is to publish and disseminate it to other people.

487. The First Amendment right to gather, receive, record, document, and disseminate information includes the right to photograph, audio and video record police officers performing their duties in public, as well as the right to photograph, audio and video record demonstrations.

488. Police officers performing their public duties in public places have no reasonable expectation that their conduct is private and will not be recorded, documented, published, and disseminated.

489. Defendants' actions in using "less-lethal" weapons on individuals recording or documenting police officers performing their public duties in public places violated Plaintiffs' First Amendment rights.

490. Defendants' actions in using "less-lethal" weapons on Plaintiffs in order to discourage, control, or suppress their speech violated Plaintiffs' First Amendment rights.

491. The misconduct described in this Count was undertaken pursuant to the policies, practices, and customs of Defendants Denver and Aurora. The policies, practices, and customs of Defendants Denver and Aurora were the moving force behind the misconduct described in this Count and the violation of Plaintiffs' rights. The policies, practices, and customs of Defendants Denver and Aurora were the

moving force behind the misconduct described in this Count and the violation of Plaintiffs' rights.

492. Defendant Denver is liable because the violation of Plaintiffs' rights as described in this Count was caused by the policies, practices, or customs of the relevant policymakers for Defendant Denver, or caused by the unconstitutional actions of final policymakers for Defendant Denver.

493. Defendant Aurora is liable because the violation of Plaintiffs' rights as described in this Count was caused by the policies, practices, or customs of the relevant policymakers for Defendant Aurora.

494. In the manner described more fully above, the need for policies, training, and supervision of officers on how to handle the use of force on protestors was so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of Defendants Denver and Aurora can reasonably be said to have been deliberately indifferent to the need.

495. Commander Phelan was personally involved in or personally directed, controlled, or authorized the actions of subordinate officers which violated the rights of Plaintiffs. Also, Defendant's actions, direction, and control caused the constitutional violations complained of herein; they set in motion a series of events that he knew or reasonably should have known would cause others to deprive Plaintiffs of their constitutional rights. He knew of and acquiesced in the constitutional violations committed by his subordinates. In so doing, Phelan knowingly created a substantial risk of constitutional injury and disregarded known

or obvious consequences of his actions, exhibiting deliberate indifference to the rights of Plaintiffs.

496. As a direct and proximate result of Defendants' actions, Plaintiffs' constitutional rights were violated, entitling them to relief.

Count II: 42 U.S.C. § 1983 – Fourth Amendment

497. Plaintiffs incorporates by reference each of the paragraphs in this Complaint as if restated fully herein.

498. In the manner described more fully above, Defendants violated Plaintiffs' rights to be free from unreasonable and excessive force under the Fourth Amendment when they used "less-lethal" weapons on Plaintiffs while they presented no threat and without an individualized determination of individual conduct justifying such force, or used such weapons specifically to suppress their expressive activity.

499. The misconduct described in this Count was undertaken pursuant to the policies, practices, and customs of the Defendants Denver and Aurora. The policies, practices, and customs of Denver and Aurora were the moving force behind the misconduct described in this Count and the violation of Plaintiffs' rights.

500. Defendant Denver is liable because the violation of Plaintiffs' rights as described in this Count was caused by the policies, practices, or customs of the relevant policymakers for Defendant Denver, or caused by the unconstitutional actions of final policymakers for Defendant Denver.

501. Defendant Aurora is liable because the violation of Plaintiffs' rights as described in this Count was caused by the policies, practices, or customs of the relevant policymakers for Defendant Aurora.

502. In the manner described more fully above, the need for policies, training, and supervision of officers on how to handle the use of force on protestors was so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of Defendants Denver and Aurora can reasonably be said to have been deliberately indifferent to the need.

503. Commander Phelan was personally involved in or personally directed, controlled, or authorized the actions of subordinate officers which violated the rights of Plaintiffs. Also, Defendant's actions, direction, and control caused the constitutional violations complained of herein; they set in motion a series of events that he knew or reasonably should have known would cause others to deprive Plaintiffs of their constitutional rights. He knew of and acquiesced in the constitutional violations committed by his subordinates. In so doing, Phelan knowingly created a substantial risk of constitutional injury and disregarded known or obvious consequences of his actions, exhibiting deliberate indifference to the rights of Plaintiffs.

504. As a direct and proximate result of Defendants' actions, Plaintiffs' constitutional rights were violated, entitling them to relief.

Count III: 42 U.S.C. § 1983 – Fourteenth Amendment

505. Plaintiffs incorporates by reference each of the paragraphs in this Complaint as if restated fully herein.

506. In the manner described more fully above, Defendants violated Plaintiffs’ rights to due process when they affirmatively and indiscriminately used “less-lethal” weapons and/or kettled Plaintiffs without any lawful justification. Furthermore, this conduct was deliberately indifferent to the Plaintiffs’ rights, arbitrary, conscience-shocking, and constituted an abuse or misuse of government power, under the Fourteenth Amendment.

507. The misconduct described in this Count was undertaken pursuant to the policies, practices, and customs of the Defendants Denver and Aurora. The policies, practices, and customs of Denver and Aurora were the moving force behind the misconduct described in this Count and the violation of Plaintiffs’ rights.

508. Defendant Denver is liable because the violation of Plaintiffs’ rights as described in this Count was caused by the policies, practices, or customs of the relevant policymakers for Defendant Denver, or caused by the unconstitutional actions of final policymakers for Defendant Denver.

509. Defendant Aurora is liable because the violation of Plaintiffs’ rights as described in this Count was caused by the policies, practices, or customs of the relevant policymakers for Defendant Aurora.

510. In the manner described more fully above, the need for policies, training, and supervision of officers on how to handle the use of force on protestors

was so obvious, and the inadequacy so likely to result in the violation of constitutional rights, that the policymakers of Defendants Denver and Aurora can reasonably be said to have been deliberately indifferent to the need.

511. Commander Phelan was personally involved in or personally directed, controlled, or authorized the actions of subordinate officers which violated the rights of Plaintiffs. Also, Defendant's actions, direction, and control caused the constitutional violations complained of herein; they set in motion a series of events that he knew or reasonably should have known would cause others to deprive Plaintiffs of their constitutional rights. He knew of and acquiesced in the constitutional violations committed by his subordinates. In so doing, Commander Phelan knowingly created a substantial risk of constitutional injury and disregarded known or obvious consequences of his actions, exhibiting deliberate indifference to the rights of Plaintiffs.

512. As a direct and proximate result of Defendants' actions, Plaintiffs' constitutional rights were violated, entitling them to relief.

PRAYER FOR RELIEF

Wherefore, Plaintiffs Tejas Cousik, Tarin Allen, Jake Douglas, Alejo Gonzalez, Jeremy Hedlund, Robert Helmick, Phillip Lopez, Tyson McCormick, Brianne Sanchez, Emma Smedberg, James Williams, Mariah Wood, and Abigail Zinman respectfully request that the Court enter judgment in their favor and against Defendants City and County of Denver, Colorado, and City of Aurora awarding as follows:

513. Compensatory damages for Plaintiffs for the violations of their federal constitutional rights, pain and suffering, and other injuries;

514. An award of attorneys' fees pursuant to 42 U.S.C. § 1988, and costs;

515. Pre- and post-judgment interest as permitted by law;

516. Such other and further relief as the Court may deem just and proper.

JURY DEMAND

Plaintiffs hereby demand a trial by jury pursuant to Federal Rule of Civil Procedure 38(c) on all issues so triable.

Respectfully submitted,

s/ Elizabeth Wang

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