

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BLACK LIVES MATTER SEATTLE
KING COUNTY, ABIE EKENEZAR,
SHARON SAKAMOTO, MURACO
KYASHNA-TOCHA, ALEXANDER
WOLDEAB, NATHALIE GRAHAM,
AND ALEXANDRA CHEN,

Plaintiffs,

v.

CITY OF SEATTLE,

Defendant.

No. 2:20-CV-00887-RAJ

[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR
CONTEMPT

NOTE ON MOTION CALENDAR:
Oct. 5, 2020

This matter comes before the Court on Plaintiffs' motion to enforce this Court's preliminary injunction and for a finding of contempt.

The Court, having thoroughly considered Plaintiffs' motion and the declarations and exhibits filed in support of the motion, Defendant City of Seattle's opposition (if any), the applicable law, the relevant portions of the record and the arguments of counsel, hereby finds the City of Seattle **IN CONTEMPT** of this Court's Preliminary Injunction (ECF 34; ECF 42) and

1 Order Granting Stipulated Clarification of Preliminary Injunction entered August 10, 2020 (ECF
2 110). Accordingly, the Court **GRANTS** Plaintiffs’ motion.

3 **FINDINGS**

4 1. On June 12, 2020, the Court partially granted Plaintiffs’ motion for a temporary
5 restraining order enjoining the City from using chemical weapons and projectiles against
6 peaceful protesters. *See* ECF 34. The Court found that the SPD “has in fact used less-lethal
7 weapons disproportionately and without provocation” and that Plaintiffs were likely to succeed
8 on the merits of their First and Fourth Amendment claims against the City. *Id.* at 3.

9 2. The temporary restraining order enjoined the City from “employing chemical
10 irritants or projectiles of any kind against persons peacefully engaging in protests or
11 demonstrations.” ECF 34 ¶ 1. It noted that individual officers could take “necessary, reasonable,
12 proportional, and targeted action to protect against a specific imminent threat of physical harm to
13 themselves or identifiable others or to respond to specific acts of violence or destruction of
14 property” but that chemical weapons and projectiles could not be “deployed indiscriminately into
15 a crowd” and, “to the extent reasonably possible, they should be targeted at the specific
16 imminent threat” justifying their deployment. *Id.* (emphasis added).

17 3. On June 17, 2020, the parties stipulated to a preliminary injunction with terms
18 identical to the TRO extending the injunction through Sept. 30, 2020. *See* ECF 42. The Court
19 entered the agreed preliminary injunction.

20 4. On June 26, 2020, the Seattle City Council passed Ordinance 119805 banning the
21 crowd control weapons at issue in this suit.

22 5. In the evening on Friday, July 24, 2020, the Honorable James Robart granted an
23 emergency motion by the Department of Justice to temporarily enjoin Ordinance 119805 until it

1 could be reviewed under the terms of a consent decree entered into by the City of Seattle in a
2 2011 suit by the United States alleging a pattern of excessive use of force by Seattle police. In
3 granting the DOJ’s motion for a TRO, Judge Robart made clear that this Court’s order was “the
4 current status quo” with respect to crowd control weapons and remained in effect. ECF 630,
5 *United States v. City of Seattle*, No. 12-cv-01282-JLR (W.D. Wash).

6 6. The following day, Saturday, July 25, 2020, the Seattle Police Department
7 deployed hundreds of chemical weapons and projectiles—including non-directional canisters of
8 gas, handheld pepper spray, flash bang grenades, blast balls, pepper balls, and foam-tipped
9 projectiles—at protesters. This deployment of force was documented in dozens of declarations,
10 photos, and videos (ECF 52-75; ECF 79; ECF 86-87; ECF 93-106) submitted by Plaintiffs in
11 support of their Motion for Order to Show Cause Why City of Seattle Should Not Be Held in
12 Contempt for Violating the Preliminary Injunction. ECF 51. Defendant submitted its response,
13 ECF 78, along with declarations and a powerpoint file, ECF 80-85. Plaintiffs submitted their
14 reply. ECF 87.

15 7. On July 31, 2020, the Court conducted a status hearing with counsel by Zoom
16 videoconference, after which the Court issued its Order re Evidentiary Hearing setting a
17 scheduling order and a 5-day evidentiary hearing to commence on August 26, 2020. ECF 90.

18 8. On August 10, 2020, Plaintiffs and Defendant submitted to the Court a proposed
19 order granting a “stipulated clarification” of the preliminary injunction. ECF 109. Later that day,
20 the Court issued its Order Granting Stipulated Clarification of Preliminary Injunction (“Clarified
21 PI”). ECF 110. Plaintiffs’ Motion for Order to Show Cause (ECF 51) was dismissed without
22 prejudice and the scheduled August 26, 2020, evidentiary hearing was vacated. The Clarified PI
23 also stayed proceedings in this case pending review by Judge Robart of the City of Seattle’s

1 crowd control weapons ordinance in *United States v. City of Seattle* and maintained this Court’s
2 Preliminary Injunction (ECF 42) as amended by the Clarified PI (ECF 110) in full effect for 90
3 days after the stay in this case is lifted.

4 9. On September 30, 2020, Plaintiffs filed their second motion seeking a finding that
5 the City was in contempt of the Court’s orders and an order holding the City in contempt
6 (“Contempt Motion”). Specifically, Plaintiffs have alleged that Defendant had used less-lethal
7 weapons and associated force against protesters on August 26, 2020, September 7, 2020,
8 September 22, 2020, and September 23, 2020, in violation of the Court’s August 10, 2020,
9 Clarified PI (ECF 110) which amended but left in full effect the Court’s Preliminary Injunction
10 (ECF 42). To support their second Contempt Motion, Plaintiffs submitted numerous declarations,
11 videos, and photos documenting the use of chemical weapons and projectiles—including non-
12 directional canisters of gas, handheld pepper spray, flashbang grenades, blast balls, pepper balls,
13 and foam-tipped projectiles—at protesters.

14 **August 26, 2020 Violations**

15 10. SPD used less-lethal weapons on August 26, 2020, in a way that was not
16 necessary, reasonable, proportional, or targeted to address a specific imminent threat of physical
17 harm or to respond to specific acts of violence or property destruction in violation of ¶ (1)(1) of
18 the Preliminary Injunction (ECF 42 at 2) in at least the following instances:¹

19 ¹ The listed instances in this and the remainder of this Order are not necessarily all the
20 violations that occurred. The Court provides them because the Court’s previous ruling granting
21 Plaintiffs’ Motion for Temporary Restraining Order describing the conduct indicating Plaintiffs’
22 likelihood of success on the merits, ECF 34 at 5-7, 8, as well as the language describing
23 proscribed conduct in this Court’s Preliminary Injunction (ECF 42) and Clarified PI (ECF 110)
have not stopped similar conduct from occurring. The findings describing specific instances is
intended to provide additional clarity and guidance for the City of Seattle as specified in the
Court’s amendment to its injunctive orders set forth below.

1 a. Using of pepper spray on people who were retreating as a means of forcing them
2 to retreat faster;

3 b. Failing to provide a dispersal order and time and space to retreat before deploying
4 pepper spray.

5 11. SPD used these weapons on August 26, 2020, in an indiscriminate manner in
6 violation of ¶ (1)(1) of this Court's Preliminary Injunction (ECF 42 at 2) in at least the following
7 instances:

8 a. Deploying blast balls at protesters who were retreating and not presenting a
9 specific threat;

10 b. Pepper spraying protesters who fell or fell behind when protesters were forced to
11 walk very fast or run, in the absence of any specific threat.

12 12. SPD used these weapons on August 26, 2020, to re-route protesters even though
13 this re-routing was not necessary to prevent specific imminent threat of physical harm to officers
14 or identifiable others, or to respond to specific acts of violence or destruction of property, in
15 violation of ¶ 1.a. of the Clarified PI (ECF 110 at 3), in at least the following instances:

16 a. Unnecessarily forcing protesters to retreat at jogging speed for substantial
17 distances and using pepper spray on protesters who fell or fell behind without
18 cause and in the absence of any threat.

19 13. SPD used these weapons on August 26, 2020, without first issuing warnings
20 reasonably calculated to alert attendees in the area where the weapons were to be deployed and
21 allowing them reasonable time, space, and opportunity under the circumstances to leave the area,
22 in violation of ¶ 1.b. of the Clarified PI (ECF 110 at 3), in at least the following instances:

- 1 a. Employing less-lethal weapons before any dispersal order was given and without
- 2 warning that the less-lethal weapons would be deployed unless the crowd
- 3 dispersed;
- 4 b. Employing less-lethal weapons without allowing reasonable time or space for
- 5 protesters to disperse.

6 **September 7, 2020 Violations**

7 14. SPD used less-lethal weapons on September 7, 2020, in a way that was not

8 necessary, reasonable, proportional, and targeted to address a specific imminent threat of

9 physical harm or to respond to specific acts of violence or property destruction, in violation of

10 ¶ (1)(1) of the Preliminary Injunction (ECF 42 at 2), in at least the following instances:

- 11 a. Moving on protesters with multiple less-lethal weapons at the outset of a protest
- 12 without any targeting of specific threats;
- 13 b. As one among many examples, the use of pepper spray against Plaintiff
- 14 Alexandra Chen when she was filming while walking backwards away from the
- 15 approaching officers and was peacefully protesting.

16 15. SPD used these weapons on September 7, 2020, in an indiscriminate manner, in

17 violation of ¶ (1)(1) of this Court's Preliminary Injunction (ECF 42 at 2), in at least the following

18 instances:

- 19 a. Repeatedly launching or throwing less-lethal weapons into the middle of a crowd
- 20 of protesters without directing them to any specific threat, a deployment that is
- 21 inherently indiscriminate and in violation of the order;
- 22 b. Using these many less-lethal weapons on a crowd of protesters without any
- 23 targeting of a specific threat;

1 c. Causing substantial discomfort, illness, and injury to many peaceful protesters.

2 16. SPD used these weapons on September 7, 2020, to re-route protesters even though
3 this re-routing was not necessary to prevent specific imminent threat of physical harm to ...
4 [officers] or identifiable others, or to respond to specific acts of violence or destruction of
5 property in violation of ¶ 1.a. of the Clarified PI (ECF 110 at 3) in at least the following
6 instances:

7 a. Deploying less-lethal weapons against protesters in front of SPOG headquarters to
8 re-route them along several streets for more than 2 miles when it was not
9 necessary to prevent specific imminent threat of harm to persons or to respond to
10 specific acts of violence or destruction of property.

11 17. SPD used these weapons on September 7, 2020, without first issuing warnings
12 reasonably calculated to alert attendees in the area where the weapons were to be deployed and
13 allowing them reasonable time, space, and opportunity under the circumstances to leave the area,
14 in violation of ¶ 1.b. of the Clarified PI (ECF 110 at 3), in at least the following instances:

15 a. Deploying weapons against protesters who were gathered at SPOG headquarters
16 and who were participating peacefully without issuing a warning and without
17 giving them reasonable time, space, and opportunity to retreat;

18 b. Continuing to prevent protesters from dispersing by chasing them for a long
19 distance and preventing them from leaving or retreating.

20 **September 22, 2020 Violations**

21 18. SPD used a less-lethal weapon on September 22, 2020, in a way that was not
22 necessary, reasonable, proportional, and targeted to address a specific imminent threat of
23

1 physical harm or to respond to specific acts of violence or property destruction, in violation of
2 ¶ (1)(1) of the Preliminary Injunction (ECF 42 at 2), in at least the following instances:

- 3 a. Deployment of a blast ball at a person lying on the ground who presented no
4 threat to person or property.

5 19. This use of a blast ball was also indiscriminate, in violation of ¶ (1)(1) of this
6 Court's Preliminary Injunction (ECF 42 at 2).

7 20. SPD used this weapon on September 22, 2020, without first issuing warnings
8 reasonably calculated to alert attendees in the area where the weapons were to be deployed and
9 allowing them reasonable time, space, and opportunity under the circumstances to leave the area,
10 in violation of ¶ 1.b. of the Clarified PI (ECF 110 at 3), in at least the following instances:

- 11 a. Failing to give a dispersal order or warning before deploying a blast ball near
12 protesters and very near a person lying on the ground.

13 **September 23, 2020 Violations**

14 21. SPD used less-lethal weapons on September 23, 2020, in a way that was not
15 necessary, reasonable, proportional, and targeted to address a specific imminent threat of
16 physical harm or to respond to specific acts of violence or property destruction, in violation of
17 ¶ (1)(1) of the Preliminary Injunction (ECF 42 at 2), in at least the following instances:

- 18 a. Though there were instances of property destruction, repeatedly deploying
19 flashbang grenades, detonating canisters of gas, using pepper spray, and firing
20 rubber bullets on large numbers of protesters.

21 22. SPD used these weapons on September 23, 2020, in an indiscriminate manner, in
22 violation of ¶ (1)(1) of this Court's Preliminary Injunction (ECF 42 at 2), in at least the following
23 instances:

- 1 a. Deploying large numbers of less-lethal weapons into a crowd rather than targeting
- 2 the use of the weapons to address a specific threat of imminent injury or property
- 3 destruction;
- 4 b. Repeating indiscriminate use of the weapons throughout a forced retreat of
- 5 protestors over a long distance;
- 6 c. Throwing or launching flashbang grenades overhand into the crowd, a manner of
- 7 deployment that is inherently indiscriminate and in violation of the order.

8 23. SPD used these weapons on September 23, 2020, to re-route protesters even
9 though this re-routing was not necessary to prevent specific imminent threat of physical harm to
10 officers or identifiable others, or to respond to specific acts of violence or destruction of
11 property, in violation of ¶ 1.a. of the Clarified PI (ECF 110 at 3), in at least the following
12 instances:

- 13 a. Deploying a large number of less-lethal weapons to re-route and protestors
- 14 without reference to any specific ongoing threat;
- 15 b. Refusing to allow people to leave and pursuing them while continuing to use the
- 16 weapons.

17 24. SPD used these weapons on September 23, 2020, without first issuing warnings
18 reasonably calculated to alert attendees in the area where the weapons were to be deployed and
19 allowing them reasonable time, space, and opportunity under the circumstances to leave the area,
20 in violation of ¶ 1.b. of the Clarified PI (ECF 110 at 3), in at least the following instances:

- 21 a. Employing the weapons without warning or any reasonable time or space to
- 22 disperse;

1 b. Continuing to pursue protesters while using the weapons and not allowing them to
2 disperse;

3 c. Following and then surrounding the protesters in a park while continuing to
4 employ the weapons.

5 **Contempt Finding**

6 25. After SPD used less lethal weapons against protesters on August 26, 2020,
7 September 7, 2020, September 22, 2020, and September 23, 2020, Plaintiffs alerted the City. The
8 City responded, largely denying that any violation occurred.

9 26. The Court finds that the City has failed to take all reasonable steps within its
10 power to comply with this Court’s Preliminary Injunction (ECF 42) and this Court’s Clarified
11 Preliminary Injunction (ECF 110). Accordingly, the Court holds the City in contempt.

12 27. To ensure the City’s compliance with the letter and spirit of this Court’s orders,
13 and in light of the fact that these protests are ongoing and, given local and national events, are
14 not likely to be short-lived as the Court has previously observed (*see* ECF 34 at 1), the Court
15 finds that an order setting forth additional terms is necessary.

16
17 Accordingly, the Court **GRANTS** Plaintiffs’ Motion for Contempt and hereby **ORDERS**
18 as follows:

- 19 1. The Defendant City of Seattle will institute in-person training for all SPD officers
20 regarding what is prohibited by the Court’s orders, ECF 42 and ECF 110. The City will
21 submit its plans for this training and an overview of the curriculum for this training to this
22 Court and the Plaintiffs no later than October 26, 2020. Plaintiffs will have one week to
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1 comment on the proposed training and the Court will determine whether it is adequate to
2 address the violations found herein.

3 2. The Defendant City of Seattle will inform the Court and the Plaintiffs in writing by
4 October 26, 2020 of any actions it has taken to address the violations found herein,
5 including any disciplinary, informational, prosecutorial, or other actions.

6 3. Whenever SPD deploys any of the weapons covered by the Court's orders, the City shall,
7 within 5 working days of deployment, file with the Court a certification that every
8 deployment was in conformity with the Court's orders, or, if the City is unable to certify
9 full compliance, what noncompliance occurred and what action the City is taking to
10 remedy the noncompliance. As part of this certification, the City shall, as to each instance
11 of deployment, state: the approximate time and place of deployment; the covered weapon
12 deployed; and if the City certifies the deployment to be in conformity with the Court's
13 orders, state the reason based in the Court's orders that the City believes the deployment
14 to be permitted.

15 4. The City of Seattle will ensure that a copy of this Order is distributed via an ALL SPD
16 email to every Seattle Police Department officer within 24 hours of the issuance of this
17 Order and certify to the Court that it has done so.

18 5. The City of Seattle will ensure that the SPD Chief of Police, Deputy Chief, and all
19 Assistant Chiefs, Captains, Lieutenants, and Sergeants have read this Order, including
20 each specific instance where violations have been found. After this has been completed,
21 the City will certify to the Court that this has been completed.

22 6. The City of Seattle will ensure that no officer may engage in crowd control unless the
23 officer has read this Order, and that after November 15, 2020, no officer who has not

1 participated in the training required by paragraph 1 of this Order may be deployed to any
2 demonstration or event that may require crowd control.

- 3 7. As a sanction for violating this Court's orders, the City is ordered to pay Plaintiffs'
4 reasonable attorneys' fees in bringing this motion. Plaintiffs are ordered to file a fee
5 petition with this Court within seven (7) days.

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7 IT IS SO ORDERED by the Court this ____ day of _____, 2020.

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10 HONORABLE RICHARD A. JONES
11 United States District Judge
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