

**The Bronx
Defenders**

**Redefining
public
defense**

**New York State Attorney General Letitia James
Virtual Public Hearing on Police/General Public Interactions During Recent Protests
Wednesday, June 17, 2020**

Written Testimony of The Bronx Defenders

The Bronx Defenders (“BxD”) is a public defender non-profit that is radically transforming how low-income people in the Bronx are represented in the legal system, and, in doing so, is transforming the system itself. Our staff of over 350 includes interdisciplinary teams made up of criminal, civil, immigration, and family defense attorneys, as well as social workers, benefits specialists, legal advocates, parent advocates, investigators, and team administrators, who collaborate to provide holistic advocacy to address the causes and consequences of legal system involvement. Through this integrated team-based structure, we have pioneered a groundbreaking, nationally-recognized model of representation called holistic defense that achieves better outcomes for our clients. Each year, we defend more than 20,000 low-income Bronx residents in criminal, civil, child welfare, and immigration cases, and reach thousands more through our community intake, youth mentoring, and outreach programs. Through impact litigation, policy advocacy, and community organizing, we push for systemic reform at the local, state, and national level. We take what we learn from the clients and communities that we serve and launch innovative initiatives designed to bring about real and lasting change.

I. Mass Arrest in the Bronx on June 4th

On the evening of June 4, 2020, the NYPD conducted a violent mass arrest of individuals who had gathered in the South Bronx to protest the police killing of Black people in this country. As Gothamist reported the next day, while large scale arrests had occurred in both Brooklyn and Manhattan, “it was the Bronx that saw the most aggressive show of NYPD force to date, as part of a planned mass arrest operation that Police Commissioner Dermot Shea described Friday as ‘executed nearly flawlessly.’”¹

¹ <https://gothamist.com/news/nypds-ambush-of-peaceful-bronx-protesters-was-executed-nearly-flawlessly-city-leaders-agree>

Numerous individuals from our office witnessed NYPD's brutality on the ground, either as protestors or as designated legal observers. Attorneys from The Bronx Defenders also provided volunteer jail support at the 40th and 41st precincts and Queens Central Booking, where hundreds of people arrested in the Bronx were later taken and processed for curfew violations. Additionally, criminal defense attorneys from The Bronx Defenders staffed a 24-hour legal hotline that received hundreds of calls from family members and friends looking for loved ones who went missing after the mass arrest. In these capacities, we witnessed the NYPD's mistreatment of the protestors at multiple stages and from varying perspectives. What we saw was devastating.

II. Mayhem and Violence on the Ground

Just before 8pm on the evening of June 4, protestors who were marching down 136th Street in Mott Haven were abruptly blocked by a wall of heavily armored police officers with bicycles. These officers began pushing the protestors, using their bikes as weapons. Within a matter of seconds, police transport vans and buses arrived on scene. Armored police officers jumped out of the vehicles with their batons out, blocking protestors in and employing a tactic known as "kettling."² The police then systematically began to arrest everyone present, pushing them, beating them, and spraying them with pepper spray. Protestors who wished to disperse were not allowed to do so, and the few who were allowed to "leave" were deceptively guided in the direction of police blockades, where they were ultimately arrested.

Those rounded up, beaten, and arrested simply for exercising their First Amendment rights included Bronx Defenders staff, clients, and their friends and family. One criminal defense attorney from The Bronx Defenders who had volunteered as a legal observer witnessed multiple protestors telling officers that there was a pregnant woman keeled over on the ground going into labor. The officers not only ignored their pleas for help, but arrested those attempting to get the woman to a hospital.

A senior attorney at our office, a Bronx resident, was among those arrested during the protest and described the experience as follows:

I was hit on the head with a shield, and indirectly sprayed with pepper spray. I tried to use my body to get in the way of officers hitting people with batons and shields but was pushed into a crush of bodies and could not move. My handkerchief used as a face covering was untied from around my neck and removed by an officer, and the surgical mask I was wearing underneath was lost

² <https://www.vox.com/2020/6/6/21282509/george-floyd-protests-kettling-new-york-nypd>

on the ground. I did not have any PPE for the remainder of the night. I was arrested sometime after 8pm and released from Queens Central Booking as the arrest processing site around 3am.

In addition to the physical injuries sustained, this individual's phone was lost and his camera broken by the NYPD. His situation was not unique. The NYPD confirmed approximately 260 arrests were made at this protest alone,³ and there were numerous reports of recording devices such as phones and camera equipment being destroyed or confiscated. One criminal defense attorney from The Bronx Defenders who had volunteered as a legal observer witnessed a person who appeared to be a journalist place an SD card in their mouth after police destroyed their camera equipment with a baton and threatened to arrest the person if they did not leave the premises.

By its own account, the NYPD created a “flawlessly” executed trap from which there was no escape.⁴ It was traumatizing for those present.⁵

III. Targeting of Jail, Medical and Legal Support Workers

These brutal arrests were not limited to protestors. The NYPD also arrested legal observers who were present as impartial witnesses to the events. The legal observers were readily identifiable by their neon green hats and jackets, as well as by masking tape on which the words “LEGAL OBSERVER” and their attorney bar numbers were written. Moreover, the organizers of the protest spoke to a police chief on scene, detailing precisely who the legal observers were, and what the legal observers were wearing. Despite the fact that the NYPD Patrol Guide specifically sanctions the presence of legal observers at demonstrations,⁶ and despite direct assurance from the Mayor's Office that legal observers were considered essential workers, exempt from the curfew restrictions, they were rounded up and detained.⁷

³ <https://www.norwoodnews.org/mott-haven-corralling-and-beatings-by-police-at-protest-260-arrested-including-bystanders-nypd-changes/>

⁴ See FN1, *supra*.

⁵ This harrowing account of the arrests posted by Twitter user @graddepending_ was confirmed by numerous Bronx Defenders who were present at the protest: https://twitter.com/graddepending_/status/1268765464727113733

⁶ Indeed, Procedure No. 213-11 of the Patrol Guide states:

The Demonstration Observer Program established in cooperation with the Bar Association, City of New York permits properly identified observers free access through police lines at the scene of any demonstration. Observers will display prominently, on their outermost garment, a photo identification and a green armband bearing the inscription “Civilian Observer”. All members of the service will extend every courtesy and cooperation to observers. Observers shall be permitted to remain in any area, or observe any police activity, subject only to restrictions necessitated by personal safety factors, as determined by the incident commander.

⁷ <https://gothamist.com/news/round-green-hats-nypd-accused-deliberately-targeting-legal-observers-brutal-bronx-mass-arrest>

A representative from the NYPD Legal Department wearing a helmet with the number 26435 was present on scene and was captured on video saying “Legal Observers can be arrested, you’re good to go.”⁸ After receiving this information from the legal representative, police officers began beating and brutalizing legal observers. In one instance, police officers were filmed body slamming a female legal observer shortly after ripping documents out of her hand that explained that she was an essential worker.⁹ Attorneys from our office were present to witness this, and the NYC Chapter of the National Lawyers Guild detailed many of these abuses in a June 7 letter to NYPD Commissioner Shea.¹⁰

One criminal defense attorney from The Bronx Defenders who had volunteered as a legal observer witnessed an encounter in which a few of the legal observers who had managed not to be arrested were standing on a corner trying to gather information from recently arrested people who were being loaded onto a Department of Corrections bus. A lieutenant (identifiable by the bars on his collar) approached the legal observers and threatened to arrest them all if they did not leave the area in five minutes. When the lieutenant was asked to identify himself, he refused. These actions rendered the legal observers unable to perform the function of observing and detailing the NYPD’s treatment of protestors.

The abuse did not end there. Volunteer medics, present at the protest to provide medical support to injured protestors and readily identifiable by their trademark scrubs and the signature red cross insignias on their backs, were also arrested en masse. The medics were among the first group of people to be arrested, and many were badly injured themselves. With all of the medics arrested, protestors who had been brutalized were unable to receive immediate medical attention. Attorneys from The Bronx Defenders who volunteered as jail support at Queens Central Booking witnessed medics released from NYPD custody, who then remained on site to provide medical attention to people who were released throughout the night. These medics provided medical attention to people with injuries, including people with cuts to their faces, broken noses, chipped teeth, and bruising. One person was bleeding so profusely from their face that they had to be brought to the hospital.

At several points throughout the evening of the mass arrest, NYPD threatened to arrest jail support volunteers who had coordinated outside of police precincts and courthouses where protestors were being released after processing. Upon release, jail support volunteers greeted and immediately provided individuals with hand sanitizer, face masks, food, water, phone calls,

⁸ <https://youtu.be/yuJWAEqfHO8>

⁹ <https://youtu.be/OLn2iy-ia24>

¹⁰ https://www.scribd.com/document/464875743/2020-6-7-Nlgnyc-Lo-Letter-Final-Ocr-730pm-1#from_embed

medical support, instructions about their next court appearance, and offered free rides home and/or to hospitals.

Despite repeated assurances from both NYPD and the Mayor's office, jail support volunteers were consistently harassed and intimidated by officers on the ground. After being told that they had to leave their post at the 41st precinct late on the evening of June 4th, jail support workers were allowed to remain only after State Senator Gustavo Rivera—who represents the 33rd Senate District in the Bronx—appeared personally at the precinct. He proceeded to give a few protestors who had been released rides to the 40th Precinct where other protestors were still being detained.

The day after the Bronx arrests, seven local elected officials, including Senator Rivera, State Senator Alessandra Biaggi, and Assemblymembers Nathalia Fernandez and Dan Quart signed on to a letter to the NYPD concluding: “We are in agreement with the Mayor's office that [jail support volunteers] are essential workers who are not subject to the curfew. The NYPD has no authority to arrest such workers simply for violating the curfew order. They are providing essential work to our City in this difficult time.”¹¹ While the letter provided support workers with some measure of security, each worker operated at their own peril when out past curfew, and was subject to the whims of each individual officer they encountered. Attorneys from The Bronx Defenders regularly liaised with NYPD officers about this issue, both on the night of June 4th and throughout the week.

It is troubling, to say the least, that representatives from NYPD's legal department authorized these arrests and threats in direct contravention to guidance provided by the Mayor's Office, local elected officials, and the NYPD's own patrol guide. If the NYPD is not accountable to leaders who are subject to the democratic process, they are no longer accountable to the people of this City. While the Bronx District Attorney's Office has said that it will not pursue certain low-level charges against protestors, we demand that it go further and agree to drop all charges against those arrested in the June 4th protest.¹²

IV. Confusion and Obfuscation by NYPD

Since the protests began, attorneys from The Bronx Defenders have staffed a 24/7 legal hotline that has received hundreds of calls from people requesting legal representation or other information, including the whereabouts of friends or family that have been recently arrested by NYPD. Through this hotline, we work directly to address complaints of police brutality.

¹¹ <https://twitter.com/EliNorthrup/status/1269759844170510344?s=20>

¹² <https://www.nytimes.com/2020/06/15/nyregion/nypd-district-attorneys-protests.html>

After pepper spraying, tackling to the cement, and beating people with batons on the evening of June 4th, the NYPD compounded that violence by forcibly disappearing and separating New Yorkers from their loved ones for long periods of time. Anyone who attempted to contact or locate their loved ones or clients were met with silence, ridicule, or blatant disregard for constitutional rights—often all at once.

After the mass, violent arrests, the NYPD failed to provide any means by which to locate our clients, protect their legal rights, or provide critical information to families (including the safety and location of their loved ones).¹³ Calls to precincts were ignored, police officers hung up on attorneys, and many people remained lost in the system until they were released. Hundreds of people were arrested in the Bronx for curfew violations and taken to Queens or Brooklyn Central Booking, only to be released with a summons nearly 20 hours later in a totally different borough.

These tactics of confusion and obfuscation employed by the NYPD deprived protestors' of their Sixth Amendment rights to counsel. A criminal defense attorney from our office, who acted as a legal observer earlier in the day, traveled to the 40th precinct to provide jail support. Once the attorney arrived at the precinct, he learned that a client of his was detained there. There were reports that the NYPD had targeted and violently attacked the client, because they were suspected to be one of the organizers of the protest. The attorney sought to advise the NYPD that the client was represented by counsel and that they should no longer be questioned, and requested to speak with the client.

Instead of vindicating the rights recognized by the Sixth Amendment, NYPD barred the attorney from entering the precinct and instructed him to stand more than 50 yards from the building. At one point, an officer from the NYPD legal bureau came outside to tell the attorney that the client was “okay,” was not “being questioned,” and would be released “shortly,” but again refused to allow the attorney to speak with his client. The client was not released until approximately three hours later, and was never given the opportunity to speak to their attorney.

By ignoring attorneys both in person and over the phone, the NYPD deprived our clients of their constitutional right to an attorney at one of the most critical moments in their criminal case—the moments after the arrest when people are most vulnerable to questionable police interrogation. With reports that federal authorities were actively questioning arrested protestors about their political beliefs and affiliations,¹⁴ this obstruction of access to legal counsel was inexcusable.

¹³ This confusion was not unique to the evening of June 4. Indeed, the entire week was marred by confusion and a total lack of communication by NYPD, which was highlighted in a letter to the Mayor and Commissioner dated June 3 (available at <https://legalaidnyc.org/wp-content/uploads/2020/06/2020-6-3-Letter-Re-1PP-Pre-Arrest-Communication-Issues.pdf>).

¹⁴ <https://theintercept.com/2020/06/04/fbi-nypd-political-spying-antifa-protests/>

Finally, this behavior was a direct violation of the NYPD's own protocol. The NYPD Patrol Guide states that when an attorney reaches out on behalf of a client in an attempt to locate the client, the NYPD must determine if the client is detained in the station house/Department Facility.¹⁵ These violations must be dealt with appropriately to ensure that the harms done by the NYPD are not repeated.

V. Mass Arrests and COVID-19: Exacerbating an Ongoing Public Health Crisis

Amidst all of the mayhem and violence the NYPD inflicted on protestors for allegedly failing to comply with Executive Orders enacted by the State and City governments, the NYPD officers themselves acted in violation of State and City government orders regarding precautions to prevent the spread of the COVID-19 virus.

The majority of the police officers who were beating, pepper spraying, and arresting protestors failed to wear protective masks or face coverings of any kind, despite the Governor's Executive Order dated April 17 which requires *all* people in New York wear a mask in public when social distancing is not possible.¹⁶ Some officers appeared to be sick, coughing and sneezing on protestors. Additionally, protestors have given accounts of being packed into holding cells with numerous other people, making effective social distancing entirely impossible.

The dangers that exposure to COVID-19 present are obvious. That the NYPD subjected protestors to conditions that were contrary to precautions meant to combat the spread of the virus further highlights the NYPD's willingness to disregard public safety standards and state law under the guise of enforcing those very standards and laws.

VI. Conclusion

While the NYPD's behavior towards those present for the protest on June 4th in the South Bronx was brutal, violent, and inhumane, sadly, it was not surprising. For years the NYPD has targeted citizens of the South Bronx for arrest and enforcement at rates disproportionate to other boroughs. It is not a coincidence that protestors were treated with the same lack of basic dignity. Indeed, the NYPD's response to the protests only served to further confirm the legitimacy of the protestors. Without meaningful accountability there can be no justice, and no peace.

¹⁵ NYPD Patrol Guide Procedure No. 208-09

¹⁶ <https://www.governor.ny.gov/news/amid-ongoing-covid-19-pandemic-governor-cuomo-issues-executive-order-requiring-all-people-new>