2020 Protest Litigation

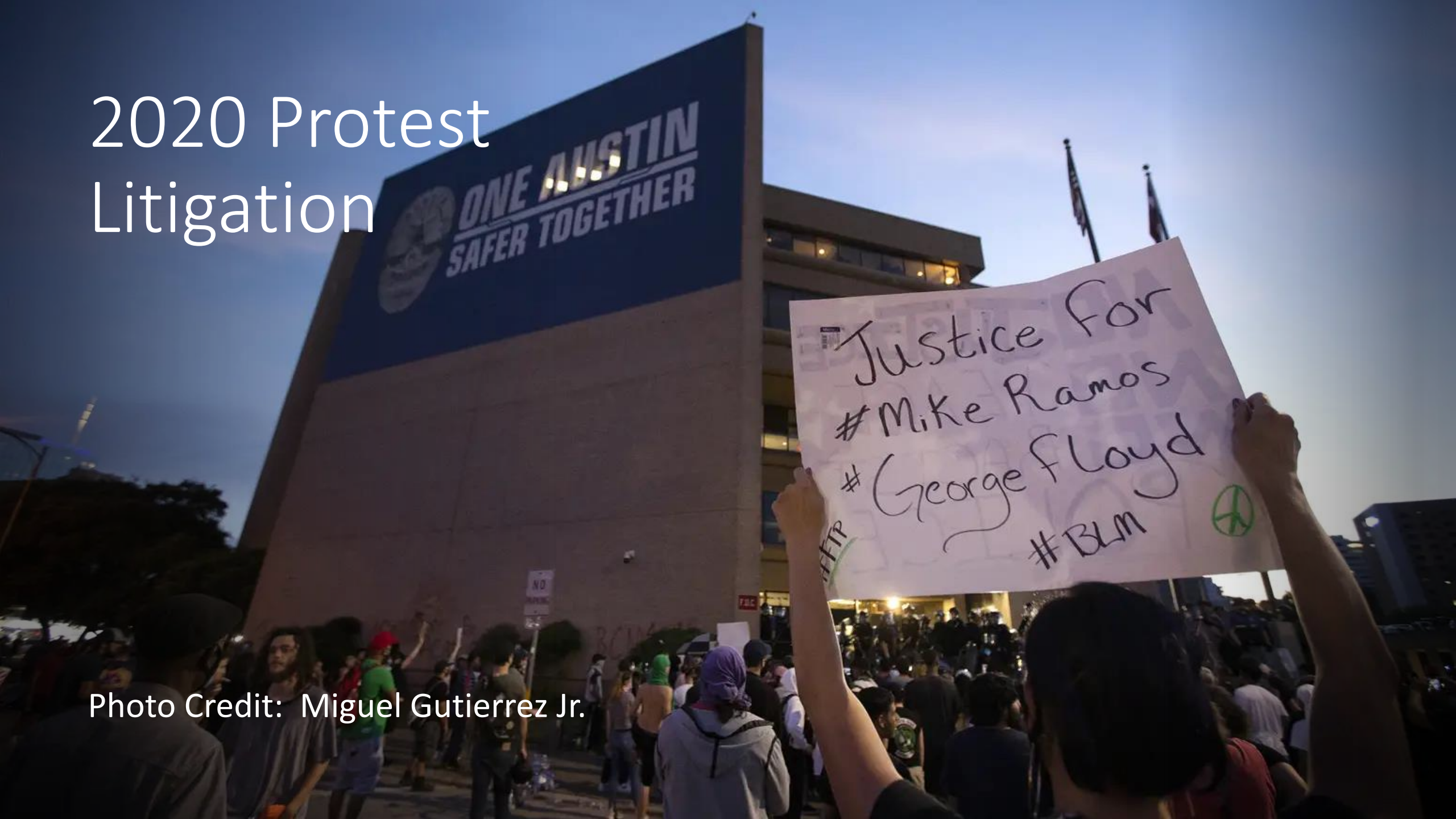


Photo Credit: Miguel Gutierrez Jr.

What Happened?

May 25-July 31, 2020: 8700 protests across major cities

Austin, Texas

- --May 30-31, 2020: major protest events in Austin, Texas
- --Protesters blocked downtown portions of I-35
- --250 recorded incidents of officers struck by baseballs, golf balls, frozen water bottles, eggs and other objects
- --Officers deployed 700-2000 bean bag rounds, baton strikes, CS gas and pepper spray
- --300 officer conduct complaints

Context for 2020 Protests

Covid-19 pandemic altered day-to-day police operations

- -suspended many in-person recruitments and trainings
- -changed work schedules and environments
- -canceled community meetings and events

Protest police staffing

- -Austin Police Department initiated emergency staffing on first full day of protests
- -staging areas and alternative deployment sites created challenges

Police/Community relations frayed

- --2019 investigation Assistant Police Chief
- --City policy-makers initiate a change to training academy curriculum;
- --Public reports identify racial disparities in policing
- --April 2020 officer involved shooting death of Michael Ramos

Nature of protests different

- -police subject of protests
- -spontaneous
- -no clear leaders or organization

Lawsuits Overview

- 25 lawsuits filed in Western District Court of Texas against the City of Austin and Doe officers;
- All raise excessive force by identified and some unidentified APD officer(s) under 28 U.S.C. §1983;
- 22/25 allege injuries from bean bag munitions
- All allege City's policies and practices, including inadequate training, supervision and use of dangerous munitions against peaceful protestors;
- Some cases allege First Amendment retaliation in use of force;
- Some cases raise negligence claims based upon use of expired munitions;
- Some cases allege equal protection violations based upon race

City *Monell* Defense

A city is not liable for the actions of its employees unless a constitutional violation was caused by a city policy or custom.

Plaintiff must prove:

- an official policy or custom existed;
- Policy-maker knew about the policy or custom;
- Policy-maker was deliberately indifferent; and
- The policy or custom was the moving force that led to the constitutional violation

Qualified Immunity

Plaintiff(s) must prove:

- after considering all of the circumstances of this case as they would have reasonably appeared to the Officer
- no reasonable officer could have believed that firing the beanbag shotgun was lawful (5th Circuit Pattern Jury Charge

If Plaintiff(s) fails to provide this, then the Officer is entitled to qualified immunity

Table 1. Patients with Beanbag Injuries during the 2020 Protests in Austin, Texas.*

Type of Injury, Sex, and Age	Details of Injury	Course
Head injury		
F, 26 yr	5-mm Subdural hematoma, hemotympanum	Admitted to ICU, treated without operative intervention, discharged on hospital day 3
M, 20 yr	Displaced right parietal skull fracture, subarachnoid hemorrhage, 5-mm subdural hematoma	Intubated, taken to OR for craniectomy and cranioplasty, admitted to ICU, given a tracheostomy, discharged on hospital day 23 to rehabilitation facility
M, 18 yr	6-cm Scalp laceration, subarachnoid hemorrhage	Treated with washout and laceration repair, admitted to medical–surgical floor, discharged on hospital day 1
M, 16 yr	Midline comminuted, depressed frontal bone fracture; retained beanbag; bifrontal intraparenchymal hemorrhage; subarachnoid hemorrhage; subdural hematoma	Taken to OR for foreign-body removal, bifrontal craniotomy, cranioplasty, and complex wound closure; admitted to ICU; given a psychiatric consultation; discharged on hospital day 6
M, 25 yr	Inner canthus laceration; comminuted, displaced fractures of the maxilla and orbital floor	Taken to OR for washout and laceration repair, discharged on hospital day 2, given delayed ORIF for facial fractures
Facial fracture		
F, 29 yr	Open facial wound with retained beanbag in masticator space; comminuted, displaced mandibular and maxillary fractures; facial nerve palsy	Taken to OR for foreign-body removal, washout, and débridement; discharged on hospital day 1; treated with healing by secondary intention (i.e., the wound was left open to heal under a dressing)
M, 23 yr	Comminuted, displaced mandibular body fracture; avulsed teeth; complex lip and gingival lacerations	Taken to OR for closed reduction, washout, débridement, and laceration repair; discharged on hospital day 1
Other injuries		
F, 29 yr	Penetrating soft-tissue injury to chest and breast, retained beanbag	Taken to OR for foreign-body removal, washout, and débridement; discharged on hospital day 1; treated with healing by secondary intention
F, 19 yr	Open fracture of the olecranon with retained foreign bodies	Taken to OR for ORIF, débridement, and foreign-body removal; discharged on hospital day 2
M, 54 yr	Lacerations to torso and shin	Received washout and laceration repair, discharged
F, 19 yr	Laceration to eyebrow	Received washout and laceration repair, discharged
F, 43 yr	Tuft fracture	Received splinting, discharged
M, 36 yr	Abdominal abrasion, contusion	Discharged
M, 31 yr	Elbow laceration	Received washout and laceration repair, discharged
M, 22 yr	Olecranon fracture	Received sling, discharged
M, 16 yr	Contusion to forearm and leg	Discharged
F, 24 yr	Contusion to abdomen	Discharged
M, 20 yr	Contusion to abdomen, ear laceration	Received washout and laceration repair, discharged
F, 19 yr	Scalp laceration	Received washout and laceration repair, discharged

* ICU denotes intensive care unit, OR operating room, and ORIF open reduction internal fixation.

Procedural and Timing Issues

- New District Attorney announces grand jury proceedings for 10 protest incidents
- Timing of administrative/disciplinary process versus timing of criminal investigation
- Does consolidation make sense?
- Plaintiffs' counsel noticed depositions of officers who were not named in the lawsuits but subjects of investigation
  --Representation conflict for City lawyers
  --should officers sit for deposition in civil case
- Officers' counsel sought a stay—limited success
  --officers invoke Fifth Amendment rights
- February 2022 DA announces 19 indictments
- Stay Motions
  --*Wallace v. Kato* 549 US 384 (2007)
  --*United States v. Little Al* 712 F.3d 133, 136 (5th Cir. 1983)

Litigation Status

- 14 lawsuits resolved
- $18.35 million in settlements
- Five of the 19 indicted officers sued the City and the District Attorney in state court;


George Floyd Protests
Denver, Colorado
May 28 – June 4, 2020


10 mutual aid jurisdictions assisted
Mayor enacted 8 pm curfew on 3rd day
GATE 7
DENVER
DENVER POLICE

Michael B. Hancock
MAYOR

City and County of Denver
OFFICE OF THE MAYOR
CITY AND COUNTY BUILDING
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EMERGENCY CURFEW

Issued pursuant to DRMC Section 2-98

I, Michael B. Hancock, Mayor of the City and County of Denver, subject to the authority granted to me pursuant to the State Constitution, the Colorado Revised Statutes, the Charter of the City and County of Denver ("Charter"), and the Denver Revised Municipal Code ("DRMC"), do hereby proclaim the following Emergency Regulation:

WHEREAS, on May 25, 2020, George Perry Floyd died while in the custody of the Minneapolis Police Department; and

WHEREAS, in the aftermath of Mr. Floyd's death, a civil disturbance has occurred within the downtown and surrounding areas of the City and County of Denver, with resulting significant and extensive damage to people and/or property, including several public and private businesses and buildings that have been damaged, looted, or burned; and

WHEREAS, in the aftermath of Mr. Floyd's death and the resulting civil unrest and disorder, law enforcement personnel, residents, and visitors have been and remain at risk of significant injury and death, as well as significant destruction to public and private property and the potential for further civil unrest or disorder is to such an extent that extraordinary measures must be taken to preserve order necessary to protect the public health, safety, and welfare; and

WHEREAS, a majority of the destruction and violence has taken place under the cover of darkness; and

WHEREAS, as a result, on May 30, 2020, I declared a State of Local Disaster Emergency pursuant to the State Constitution, the Colorado Disaster Emergency Act (C.R.S. § 24-33.5-701, *et seq.*), the Charter and Ordinances of the City and County of Denver, and Chapter 16 of the Denver Revised Municipal Code; and

WHEREAS, pursuant to the Charter and Ordinances of the DRMC, the Mayor, as the chief executive officer of the city, is vested with all the executive and administrative powers granted to the City and County of Denver by Article XX of the Constitution of the State of Colorado, and all executive and administrative powers contained in the Charter of the City and County of Denver, and otherwise existing by operation of law, including the power to enforce all laws and ordinances; and

WHEREAS, pursuant to the Declaration of Local Disaster Emergency, the Mayor is authorized to exercise some or all of the powers allowed by the State Constitution, the Colorado Disaster Emergency Act, and the Charter and Ordinances of the City and County of Denver during the State of Local Disaster Emergency; and

WHEREAS, DRMC Section 2-98 vests the Mayor, as an officer of the city, with the express authority to adopt emergency rules if such action is deemed necessary to protect immediately the public health, safety or welfare; and

NOW, THEREFORE, I, Michael B. Hancock, Mayor of the City and County of Denver, do hereby declare pursuant to this emergency regulation that:

1. A nighttime curfew is imposed in all public places within the City and County of Denver, including streets and public right-of-ways, during the following times:
   a) From 8:00 p.m. on Saturday, May 30, 2020, until 5:00 a.m. on Sunday, May 31, 2020; and
   b) From 8:00 p.m. on Sunday, May 31, 2020, until 5:00 a.m. on Monday, June 1, 2020.

2. During the hours of curfew, all persons are prohibited from using, standing, sitting, traveling or being present on any public street or in any public place, including for the purpose of travel, with the following exceptions:

   a. All law enforcement, fire, paramedics or other medical personnel, Colorado National Guard as well as any other emergency response personnel authorized by the City and County of Denver, and credentialed members of the news media.

   b. Individuals traveling directly to and from work, traveling directly to and from the Denver International Airport, seeking exempt care, fleeing dangerous circumstances, or experiencing homelessness.

   c. Any person to whom permission by authorized City and County of Denver officials is specifically granted.

3. The office of the Mayor of the City and County of Denver shall designate any additional personnel that are exempt from the curfew pursuant to Paragraph 2 above.

4. For purposes of this emergency regulation, "travel" includes, without limitation, travel on foot, bicycle, skateboard, scooter, motorcycle, automobile, or public transit, or any other mode of transporting a person from one location to another.

5. For purposes of this emergency regulation, "public place" means any place, whether on privately or publicly owned property, accessible to the general public, including but not limited to public streets and roads, alleys, highways, driveways, sidewalks, parks, vacant lots, and unsupervised property. For purposes of this emergency regulation, "public place" does not include the Denver International Airport.

6. For purposes of this emergency regulation, "exempt care" means necessary medical services for an individual's self or family member.

7. A violation of this emergency regulation is a criminal violation of the Denver Revised Municipal Code and is punishable by a fine not to exceed $999.00 or imprisonment for not more than 300 days, pursuant to DRMC, Section 1-13.

8.

5/30/2020
Date

Michael B. Hancock
Mayor, City and County of Denver

ATTEST:

Denver Clerk and Recorder or agent

POSTED: May 30, 2020


32 Lawsuits – U.S. District Court - Colorado
Half Multi-Plaintiff
Injuries Alleged
Named Defendants
Unidentified Officers
BLACK LIVES MATTER
NO Justice NO Peace!
Silence
TAKE A STAND

Epps, et al. v. *Denver, et al.*

Case No. 20-cv-01878-RBJ

Honorable R. Brooke Jackson

12 Plaintiffs

1st and 4th Amendment Claims

Class Certification

Bifurcation




ONE WAY
Lincoln
ONE WAY
Pre-Trial
Discovery
Motions
Settlement



Trial

Three Weeks
Mistrial Moments
Juror Questions
Economic Damages

Evidence

Video

Use of Force Reporting

Independent Monitor Review



Verdict

Jury out 1 ½ days

$14M Total

$3M Award – Injured Plaintiff

$250K Punitive Award

Colorado Jury Awards $14 Million to Demonstrators Injured in George Floyd Protests

Jurors in the civil case found that the Denver Police used excessive force against the 12 plaintiffs.

Give this article





Post-Trial

Order on Remittitur

Appeal