

RE: Joint Committee On Transparent Policing and Use of Force Reform
July 10, 2020: Written Testimony

Dear Honorable Co-Chairs Sen. Manning and Rep. Bynum,

WRITTEN TESTIMONY

Good morning to this esteemed body, and thank you for inviting me to speak with you.

My name is Juan Chavez, and I'm an attorney with the Oregon Justice Resource Center. Our clients include people fighting for the right to be socially distant from one another while incarcerated, an owner of a cidery in Portland who was attacked by a far-right fringe group, and, pertinent to this hearing, people who have been harmed by unconstitutional crowd control tactics.

From our perspective and experience, there is a disconnect between what the police believe—that it is within their lawful authority to mass-punish crowds—and the needs of crowd management. Currently, our legal framework under ORS 131.675 allows the police to do two things: police are allowed to order dispersal when a crowd becomes “unlawfully or riotously assembled,” and police are allowed to arrest people who they have engaged in criminal conduct. And that’s for a good reason: when police use force absent an arrest, they have subverted the constitutional order. Police are meant to investigate crimes and submit charging instruments. They are not the District Attorney, they are not the judge, they are not the jury, and they are not the executioner.

Civil disobedience is a protected tradition in the United States, and one that cannot be cast aside when police officers grow impatient. What we have seen night after night in Portland feels almost scripted: Portlanders assemble outside the main police precinct for the City. They chant, they make speeches, they gather and spread reading materials, they share snacks and water, and they grieve for the people who have been killed by the police. Then the police arrive, and chaos ensues. We often see those images in the news, but we don’t see what started the problem.

On some nights, the police are not even present. Those are the most peaceful nights.

The police are not a peaceful presence. Protesters do not feel safer because they are there. When the police arrive clad in full protective gear, they look and act like they are ready for war. In reaction, the people who had peacefully assembled become agitated and defensive. Maybe a water bottle will fly in the direction of the police at this time, or a soda can. To be sure, we’re not advocating for or condoning violence; but we can’t ignore the effect the sight of stormtroopers on city streets does to people in a crowd who rightfully feel like they have done nothing wrong up to that point and have intended to do nothing but express their desire for change. The crowds at these protests are not there to fight police or destroy property; some individuals may be. We have not seen crowds attacking officers en-masse. Instead, when the police lines move to

disperse the crowds, whether using weapons or not, the crowds are not fighting or actively resisting the police push. The crowd moves back with the line of officers.

As I mentioned before, there is one lawful objective that police can execute: to effectuate an arrest when there is probable cause to do so. Police have the lawful authority to deal with the few individuals in the crowds who may provide police with probable cause to arrest them. We have seen no proof that officers cannot serve that objective here in Oregon. Instead, night after night, the police use the presence of a handful of people whom they have probable cause to arrest to exact punishment on the entire crowd through use of harsh crowd control methods. And because of this, people will continue to show up to protest the violence they had originally been there protesting and the ever-accumulating violence that they and others suffered the night before and the nights before that.

Make no mistake, these are not benign weapons the police are using against the vast majority of people in every protest crowd who have no intention to commit any crime by causing harm to police officers or property. The weapons police use against them cause serious, long term injuries. I have one client whose skull suffered a hemorrhage because a less lethal round was shot blindly into a crowd he was in and struck him in the back of the head while he was attempting to comply with the officers' orders to disperse. Recently, other individuals have suffered similar head injuries on the streets of Portland while peacefully assembling. Other clients, like the Green family, were trapped in clouds of tear gas. Mrs. Green, who was pregnant, feared she was going to suffer a miscarriage because of it. This fear was not unreasonable; the chemicals in tear gas are abortifacients, and people exposed to them recently have reported frequent, irregular menstruation afterwards.

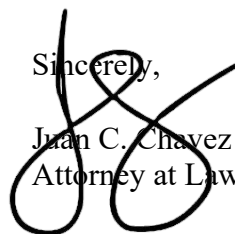
Using indiscriminate force against whole crowds of people who have broken no laws not only erodes trust between governments and the people they serve but subverts the constitutional order and rule of law that these officers swore to protect. No one benefits from officers being able to throw tear gas from their moving vehicles, as we have seen in Portland. No one benefits from police believing they are the sole arbiters of when a protest is an improper gathering.

There is a false dichotomy used to classify some protesters as good and others as bad. As most who have been in the streets advocating for justice could tell you, there have not been any good or bad protester crowds: just people unfortunate enough to be within a city block of someone else who lobbed a water bottle at the side of a building or towards a line of often far-away armored police who look and act like an occupying military force. For people who protest injustice, both historically and in the present, they often only encounter one kind of counter-protester: the police. That is a toxic dynamic that will only lead to more violence.

Thank you, and I am available to answer any questions.

Sincerely,

Juan C. Chavez
Attorney at Law

A handwritten signature in black ink, appearing to read 'Juan C. Chavez', is written over the typed name and title.