

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

BLACK LIVES MATTER D.C., et al.,

Plaintiffs,

v.

DONALD J. TRUMP, President of the United
States of America, et al.,

Defendants.

Civil Action No. 20-cv-1469 (DLF)

***AMICUS CURIAE* BRIEF OF VETERANS OF THE CIVIL RIGHTS MOVEMENT AND
CIVIL RIGHTS LEADERS IN SUPPORT OF PLAINTIFFS' OPPOSITION TO
PENDING MOTIONS TO DISMISS**

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INTRODUCTION¹

While Black Lives Matter emerged just a few years ago, its originating cause—bringing an end to vigilante and police violence against Black Americans—is nothing new. To the contrary, Black Lives Matter is only the latest chapter in a long story of similar activism. Just as our nation’s history is rife with systematic police and vigilante violence against Black Americans, it is similarly filled with activists exposing and demanding an end to such violence. Tragically, this activism has often been met with further violence. The violence at issue in this case—the June 1, 2020 attack against Black Lives Matter demonstrators—fits squarely within that pattern.

Amici present this brief to situate the facts of this case within the much larger historical backdrop of (1) organized activism demanding an end to vigilante and police violence against Black Americans, and (2) violence in response such activism. In many ways, such violence has served as a tool of control over Black communities. Thus, by calling for an end to this violence, activists have demanded not only freedom from physical harm, but also full access to all the rights our Constitution guarantees. Black Lives Matter, which has inspired tens of millions of people to join its calls for action, is the latest iteration of these demands.²

This full history is far too long and complex to fit within the page limits of an *amicus* brief. Thus, while this brief attempts to provide an outline of the pertinent history, it focuses its discussion of anti-activist violence on the experiences of those who participated in the “classical” Civil Rights Movement: the period between the U.S. Supreme Court’s 1954 decision in *Brown v.*

¹ Pursuant to this Court’s Local Civil Rule 7(o)(5), counsel certify that no counsel for any party authored this brief, in whole or in part; no party or party’s counsel contributed money that was intended to fund the preparation or submission of this brief; and no person—other than *amici* or their counsel—contributed money intended to fund the preparation or submission of this brief.

² See Larry Buchanan et al., *Black Lives Matter May Be the Largest Movement in U.S. History*, N.Y. Times (July 3, 2020), <https://www.nytimes.com/interactive/2020/07/03/us/george-floyd-protests-crowd-size.html>.

Board of Education of Topeka, 347 U.S. 483 (1954), and passage of the Voting Rights Act in 1965.³ The outsized attention this brief gives to the Civil Rights Movement, however, should not be taken to suggest that the violence those activists faced was the first of its kind, or unique to their time. To the contrary, while the achievements of the Civil Rights Movement are truly extraordinary, the causes the movement championed, and the violence its participants faced, are part of an unbroken history of violence against Black individuals in this country and violent reprisals against those who have advocated for its end.

Ultimately, this brief seeks to demonstrate that Black Lives Matter is the latest of many coordinated efforts to demand full recognition of Black individuals' basic human dignity and access to all the rights our Constitution guarantees. The June 1 attack against protesters at issue in this case is another tragic example of the violent response such efforts have historically provoked.

INTEREST OF *AMICUS CURIAE*

Amici are civil rights leaders, many of whom were active in the Civil Rights Movement. They include the following individuals: Charles Avery, Jr., Margaret Burnham, Clayborne Carson, Hazel Dukes, Mary Frances Berry, Wade Henderson, Dolores Huerta, Benjamin Jealous, Martin Luther King III, Marc Morial, Richard Morrisroe, Ruby Sales, and Marian Wright Edelman. Biographical information for each *amicus* can be found in the Appendix attached to this brief.

As past and present civil rights leaders—many of whom have experienced brutal police violence firsthand—*amici* have a strong interest in ensuring law enforcement officials do not engage in the sort of violence used against peaceful demonstrators in Lafayette Square on June 1, 2020. Granting the pending motions to dismiss would serve only to embolden those who would

³ See Jacquelyn D. Hall, *The Long Civil Rights Movement & the Political Uses of the Past*, J. of Am. History 1233, 1234 (Mar. 2005); Laurie Collier Hillstrom, *Black Lives Matter: From a Moment to a Movement* xvi-xvii (2018).

engage in such attacks.

ARGUMENT

I. For over a century, activists have organized to end vigilante and police violence against Black Americans.

Our nation has seen repeating cycles of vigilante and police violence against Black Americans, followed by organized demands for justice in response. Lost within these cycles are countless Black Americans whose lives have been tragically cut short. The discussion that follows includes illustrative examples of such events, which are by no means intended to be exhaustive.

Immediately following the end of the Civil War and the abolition of chattel slavery—an unimaginably brutal and violent institution—early law enforcement engaged in and enabled systemic violence against Black Americans. Just a year after the war ended, for example, Memphis police led a rampage in a Black neighborhood, killing 48 people (all but two of whom were Black), injuring 75 others, and destroying 90 homes, 12 schools, and four Black churches.⁴ In the decades that followed, “informal modes of terrorism and violence,” particularly lynching, “became the most pervasive form of policing and disciplining African Americans.”⁵ “Lynchings were violent, public acts of torture that traumatized black people throughout the country and were largely tolerated by state and federal officials.”⁶ As noted above, this violence was a form of control, meant to prevent Black citizens from fully entering American society and keeping them in “their ‘place.’”⁷ Law enforcement commonly participated in this violence, but even when they were not

⁴ Derrick Bell, *Police Brutality: Portent of Disaster & Discomforting Divergence*, in *Police Brutality: An Anthology* 94 (Jill Nelson ed., 2000); Mary Frances Berry, *Black Resistance/White Law: A History of Constitutional Racism in America* 73–74 (1995).

⁵ Robin D.G. Kelley, *Slangin’ Rocks . . . Palestinian Style*, in *Police Brutality*, *supra* note 4, at 27.

⁶ Bryan Stevenson, *A Presumption of Guilt: The Legacy of America’s History of Racial Injustice*, in *Policing the Black Man: Arrest, Prosecution, and Imprisonment* 22 (Angela J. Davis ed., 2017).

⁷ Kelley, *supra* note 5, at 26; *see also id.* at 27 (“Lynching was not a substitute for the day-to-day policing of a subordinate group; rather, it was a public spectacle intended to terrorize entire

personally involved, they routinely enabled this terrorizing brutality by intentionally releasing “black prisoner[s] into the waiting arms of a lynch mob” and refusing to investigate perpetrators.⁸ Meanwhile, “lynchers had ‘little to fear from those who administered the southern legal system,’” as “prosecutors often dismissed lynchings as ‘an expression of the will of the people.’”⁹

While lynching was most notorious in the South, anti-Black violence was by no means limited to any particular area of the country. As the 1920s approached, anti-Black riots spread throughout the nation, particularly in communities experiencing Black migration, which was often seen as an economic, cultural, and genetic threat. Anti-Black violence was also sparked by the return of Black soldiers from World War I as a response to the notion that those soldiers might have expected to receive the full panoply of rights our Constitution guarantees all persons.¹⁰ Examples of such riots include the massacre in Tulsa during the summer of 1921, during which a white mob—members of which had been deputized by city officials—attacked and destroyed Greenwood, a thriving neighborhood known as “Black Wall Street.”¹¹ In January 1923, a white mob descended on the predominantly Black community of Rosewood, Florida, burning buildings to the ground and killing residents as they fled.¹² As these riots occurred, “[i]n most cases, local police officers either stood by as these pogroms unfolded or actively participated on the side of

communities.”); Stevenson, *supra* note 6, at 15 (“Some ‘public spectacle lynchings’ were even attended by the entire white community and conducted as celebratory acts of racial control and domination.”).

⁸ Kelley, *supra* note 5, at 29.

⁹ Bell, *supra* note 4, at 93 (quoting Michael R. Belknap, *Federal Law & Southern Order: Racial Violence and Constitutional Conflict in the Post-Brown South* 253–70 (1988)).

¹⁰ Kelley, *supra* note 5, at 31–32.

¹¹ See *Tulsa Race Riot: A Report by the Oklahoma Commission to Study the Tulsa Race Riot of 1921* (Feb. 28, 2001), <https://www.okhistory.org/research/forms/freport.pdf>.

¹² See, e.g., Gary Moore, *Rosewood Massacre*, *St. Petersburg Times* (July 25, 1982), available at <https://assets.documentcloud.org/documents/4496244/Rosewood1982.pdf>.

White supremacists.”¹³ Indeed, one researcher estimates that during the 1920s, “approximately half of all Black people who died at the hands of Whites were murdered by the police.”¹⁴

Despite this specter of terror, activists bravely sought to document, expose, and publicly resist this violence. One such effort responded to the events of August 1900, when “police deliberately planned, stimulated, fomented, and practically conducted” a mob attack against Black people in New York City’s Tenderloin District.¹⁵ As one victim described: “[i]t was the night sticks of the police that sent a stream of bleeding colored men to the hospital, and that made the station house . . . look like a field hospital in the midst of battle.”¹⁶ In response, Black leaders formed the Citizen’s Protective League and staged a 3,500-person protest at Carnegie Hall.¹⁷ To reveal the brutal nature of the August attack, the League published an 80-page book entitled *Persecution of Negroes by Roughts and Policemen in the City of New York* comprising sworn affidavits from victims and witnesses.¹⁸ The League warned “citizens of all races” that police “[b]rutality and insolence . . . have increased greatly,” and the only way to reverse course was for “the good people of New York” to lend “sympathy and support” to the Black community.¹⁹

The rising number of lynchings and anti-Black riots also led to the creation of the National Association for the Advancement of Colored People. After white mobs killed nearly 50 Black individuals in Atlanta in 1906, and a 1908 riot killed more than 16 people, W.E.B. Du Bois, Ida

¹³ Kelley, *supra* note 5, at 30.

¹⁴ *Id.* at 32 (citing Herbert Shapiro, *White Violence & Black Response* 145-57 (1988); Mary Frances Berry & John Blassingame, *Long Memory: The Black Experience in Am.* 242 (1982)).

¹⁵ *Rector Accuses Police*, N.Y. Times (Aug. 20, 1900).

¹⁶ The Citizens’ Protective League, *Story of the Riot* 2 (1900).

¹⁷ Cheryl Hicks, *Talk With You Like A Woman: African American Women, Justice, and Reform in New York, 1890–1935* at 83 (2010).

¹⁸ Frank Moss, *Persecution of Negroes by Roughts and Policemen in the City of New York, August 1900* (1900).

¹⁹ *Story of the Riot*, *supra* note 15, at 5.

B. Wells, Archibald Grimké, Mary Church Terrell, and others created the NAACP.²⁰ One of the organization's early goals was to expose anti-Black violence to the world and to lobby Congress and the White House to enact anti-lynching legislation.²¹

Nonetheless, police violence continued, commonly followed by protests and pleas for intervention from the Black community. For example, Philadelphian Riley Bullock's 1918 killing while in police custody led to widespread protests.²² As one Black pastor wrote in a letter to the Philadelphia Tribune, "Afro-Americans of this city are tired of legalized murder . . . we are heart-sick at seeing men killed with law, homes ruined, children robbed of comfort, love and affection by law, society outraged, morals under-minded by the law."²³ Records indicate that between 1925 and 1936, Washington D.C. policemen shot and killed at least forty Black people. According to the *Afro American*, most of the victims of this violence "were under 21 years of age."²⁴ "Every officer involved ha[d] been exonerated" after these killings.²⁵ This period of terror culminated in the killing of Leonard Basey, a young Black man, who was walking with friends through a predominantly white neighborhood.²⁶ After an inquest jury exonerated the officer who killed Basey, the local branch of the National Negro Congress (NNC) called for the officer's indictment. The following year, protesters held a symbolic "'public trial' of Washington's 'killer cops,'" which, according to the *Chicago Defender*, "provided a complete picture of the lawless police

²⁰ Taylor Branch, *Parting the Waters: America in the King Years 1954–63* at 32 (1988).

²¹ Kelley, *supra* note 5, at 32.

²² *Fourth Man Dies Victim of Race Riots Downtown*, Phila. Inquirer (Aug. 1, 1918), at 6.

²³ T.D. Adkins, Letter to the Editor, Phila. Tribune (Aug. 10, 1918).

²⁴ *Victim 40th Since 1925*, Afro American (Sept. 12, 1936).

²⁵ *Id.*

²⁶ Craig Simpson, *Shootings by DC Police Spark Fight Against Brutality 1936–41*, Wash. Area Spark (Apr. 20, 2013), <https://washingtonareaspark.com/2013/04/20/shootings-by-dc-police-spark-fight-against-brutality-1936-41/>.

terror which has reigned in Washington for the past ten years.”²⁷

But these protests did little to reduce police killings in Washington, D.C. through the late 1930s and 1940s. In July and August of 1940, police officers shot four Black men in three different incidents, leading to further mass protests led by the Citizens’ Committee Against Police Brutality. On September 7, 1940, approximately 2,000 people crowded into the Metropolitan Baptist Church for a protest where Howard University professor and NNC leader Doxey Wilkerson proclaimed: “Police brutality used to be considered a local problem, today it must be viewed in terms of world significance. Police brutality and racial discrimination are part and parcel of this evil we are fighting on an international front.”²⁸ The following week, roughly 2,000 people participated in four separate marches—one for each of the recent victims of police violence—converging at 10th and U Streets NW where multiple speakers urged an end to police killings. Professor Wilkerson led chants of “police brutality has got to go” and “Old Jim Crow has got to go.”²⁹

Police violence against Black Americans continued through the mid-20th Century, and so did activism against it.³⁰ In 1951, the Civil Rights Congress, led by Black leaders including W.E.B. Du Bois, presented a petition to the United Nations entitled *We Charge Genocide: The Crime of Government Against the Negro People*. The petition argued that the United States was engaging in genocide against Black Americans. It detailed myriad examples of police brutality and the murders of hundreds of Black men and women across the country. Among these horrendous stories

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ *See, e.g.*, Clarence Taylor, *Fight the Power: African Americans and the Long History of Police Brutality in New York City* 84 (2018) (discussing the movement to resist police violence in New York City and how “[b]y the postwar period there was a growing outcry among civil rights organizations and others demanding that the city take action to end police abuse of citizens”).

was that of 13-year-old Beverly Lee, who in 1947 was shot to death by a patrolman while she was walking down a street in Detroit.³¹ Another was 86-year-old Robert Evans, “a patriarch of Norfolk, Virginia,” who in 1950 was shot by a patrolman who claimed the octogenarian had “assaulted him.”³² The authors argued:

Once the classic method of lynching was the rope. Now it is the policeman’s bullet. To many an American the police are the government, certainly its most visible representative. We submit that the evidence suggests that the killing of Negroes has become police policy in the United States . . .³³

Demands for action to reduce police violence against Black Americans continued into the 1950s and 1960s.³⁴ These efforts prompted academics to give increasing attention to the disproportionate rate at which police violence was aimed against Black Americans. For example, a study of Philadelphia police shootings revealed that, despite the fact that Black residents represented just 22% of the total city population, 87.5% of men killed by Philadelphia police between 1950 and 1960 were Black.³⁵ According to the study, Black men were 22 times more likely to be killed by a police officer than white men.³⁶ More recent studies tell an even starker story. In Jefferson County, Alabama, for example, among the 127 reported incidents of police killings between 1930 and 1970, 123 of the victims (96.8%) were Black.³⁷

³¹ Civil Rights Congress, *We Charge Genocide: The Historic Petition to the United Nations for Relief from a Crime of the United States Government Against the Negro People* 10 (1951).

³² *Id.* at 11.

³³ *Id.* at 8–9.

³⁴ *See, e.g.*, Jeanne Theoharis, *A More Beautiful and Terrible History: The Uses and Misuses of Civil Rights History* 76–77 (2018) (describing activism in Detroit against documented instances of police killings); Earnestine Lovelle Jenkins, *Images of America: African Americans in Memphis* 7 (2009) (explaining how Black men and women in Memphis “lived in one of the most segregated cities in the United States” and “protested police brutality and job discrimination”).

³⁵ Gerald D. Robin, *Justifiable Homicide by Police Officers*, 54 *J. Crim. L. & Criminology* 225, 226 (1963).

³⁶ *Id.*

³⁷ Civil Rights & Restorative Justice Project, *Historical Police Violence in Jefferson County, Alabama*, <https://crrj.northeastern.edu/police-violence-birmingham-jefferson-county/>.

For the leaders of the emerging Civil Rights Movement, ending vigilante and police violence against Black Americans was a primary goal. As the Southern Christian Leadership Conference began its Birmingham campaign in 1963, its primary intention was “to challenge the existing police brutality and put the horrors of racism on full display for the national media.”³⁸ And “[s]oon after the[ir] 1963 confrontation[s] with Bull Connor, Birmingham’s Civil Rights leaders began placing the issue of police brutality at the top of their agenda.”³⁹ In his *I Have a Dream* speech later that summer, Dr. King responded to “[t]hose who are asking the devotees of civil rights, ‘when will you be satisfied?’” by proclaiming first and foremost that “[w]e can never be satisfied as long as the Negro is the victim of the unspeakable horrors of police brutality.”⁴⁰ The crowd listening to Dr. King deliver these words was littered with placards stating: “We Demand an End to Police Brutality NOW!”⁴¹

Earlier that day, then-national chairman of the Student Nonviolent Coordinating Committee John Lewis demanded similar action, stating: “We are tired. We are tired of being beaten by policemen. We are tired of seeing our people locked up in jail over and over again, and then you holler ‘be patient.’ How long can we be patient?”⁴² In his speech, Lewis urged Congress, which was considering legislation that would eventually become the Civil Rights Act of 1964, to include a section enabling the federal government to sue states and municipalities that engaged in

³⁸ Dewey M. Clayton, *Black Lives Matter and the Civil Rights Movement: A Comparative Analysis of Two Social Movements in the United States*, 49 J. Black Studies 448, 452 (2018).

³⁹ Kelley, *supra* note 5, at 37.

⁴⁰ Martin Luther King, Jr., *I Have a Dream: Address Delivered at the March on Washington for Jobs and Freedom* (Aug. 28, 1963), <https://kinginstitute.stanford.edu/king-papers/documents/i-have-dream-address-delivered-march-washington-jobs-and-freedom>.

⁴¹ See Nat’l Museum of African Am. History & Culture, *Placard from March on Washington*, https://nmaahc.si.edu/object/nmaahc_2013.187.4.

⁴² John Lewis, *Speech at the March on Washington* (Aug. 28, 1963), <https://voicesofdemocracy.umd.edu/lewis-speech-at-the-march-on-washington-speech-text/>.

police brutality and enforced discriminatory criminal justice systems.⁴³ Congress would not enact these provisions until 1994.⁴⁴

Meanwhile, in Detroit, police brutality sparked organized demonstrations. After a police officer shot Cynthia Scott two times in the back and once in the stomach in 1963, five thousand demonstrators gathered outside of police headquarters demanding justice.⁴⁵ NAACP executive director Roy Wilkins “sounded the alarm that police relations” in the city “had worsened drastically.”⁴⁶ A year later, activists held a large-scale march “to protest five police killings in two years” and “the brutal beatings of six others.”⁴⁷

One of the most infamous incidents of police brutality during the Civil Rights Movement era, the March 7, 1965 attack on marchers on the Edmund Pettus Bridge in Selma, itself stemmed from police violence. On February 18, Marion Police Chief T.O. Harris led a brutal nighttime attack by more than 50 officers against a group of marchers peacefully protesting the arrest of SCLC project leader James Orange.⁴⁸ As chaos and panic erupted, officers chased 82-year-old Cager Lee and dozens of others into Mack’s Café, where Lee’s daughter and grandson, Viola and Jimmie Lee Jackson, had sought refuge. Viola and Jimmie attempted to intervene as officers beat Cager, but the officers turned on them, first beating Viola to the floor. They then threw Jimmie

⁴³ Margaret Burnham, *The John Lewis Legacy: Protecting the Right to be Free from Racist Policing* (July 30, 2020), <https://crrj.northeastern.edu/the-john-lewis-legacy-protecting-the-right-to-be-free-from-racist-policing/>.

⁴⁴ *Id.*

⁴⁵ Theoharis, *supra* note 34, at 77.

⁴⁶ *Id.*

⁴⁷ *Id.*; see also Wayne State Univ. Walter P. Reuther Library, *Flyer, Police Brutality Demonstration, 1965*, <https://projects.lib.wayne.edu/12thstreetdetroit/exhibits/show/beforeunrest/item/362>.

⁴⁸ Taylor Branch, *Pillar of Fire: America in the King Years 1963–65* at 592–94 (1998).

against a cigarette machine, shot him twice in the stomach, and continued to cudgel him.⁴⁹ Jimmie's death a week later sparked the planned march from Selma to Montgomery, which, as discussed further below, resulted in even more horrific police brutality.⁵⁰

While the classical period of the Civil Rights Movement achieved significant federal policy reforms in areas including segregation, employment discrimination, and voting rights, police violence and discriminatory policing remained an intractable issue. After civil unrest in Black communities spread throughout the country in 1967, President Lyndon Johnson gathered a National Advisory Commission on Civil Disorders, commonly known as the Kerner Commission, to engage in an exhaustive study of these events.⁵¹ The Commission "concluded that with few exceptions these insurrections were triggered by acts of police brutality."⁵² As the Commission explained, police misconduct was not just a "spark" for civil unrest, it had generated "a widespread belief . . . in a 'double standard' of justice and protection—one for Negroes and one for whites."⁵³

Despite the Kerner Commission's detailed recommendations, the familiar pattern of police violence against Black Americans, and resulting responsive activism, continued in the decades that followed. In early 1970s Birmingham, the local Black community formed organizations—such as the Committee against Police Brutality and the Alabama Economic Action Committee—with the express purpose of investigating and reducing police violence.⁵⁴ In other cities, new police killings

⁴⁹ *Id.*; see also Gary May, *Bending Toward Justice: The Voting Rights Act and the Transformation of American Democracy* 78 (2013).

⁵⁰ See Taylor Branch, *At Canaan's Edge: America in the King Years 1965–68* at 8–43 (2006).

⁵¹ Nat'l Advisory Comm'n on Civil Disorders, Rep. of the Nat'l Advisory Comm'n on Civil Disorders (1968).

⁵² Ron Daniels, *The Crisis of Police Brutality & Misconduct in America*, in *Police Brutality*, *supra* note 4, at 245–46.

⁵³ Nat'l Advisory Comm'n on Civil Disorders, *supra* note 51, at 5.

⁵⁴ Kelley, *supra* note 5, at 38.

sparked new protests and organization. A police officer's 1973 killing of 10-year-old Clifford Glover in Jamaica, Queens caused an outpouring of activism.⁵⁵ As Glover and his grandfather were walking down the street, an officer "jumped out of a white Buick Skylark," prompting the Glovers to flee, after which the officer shot Clifford in the back. Residents of the area "rose in protest; the streets were blocked with heavy construction equipment owned by a black contractor."⁵⁶ In Philadelphia, a police officer's shooting of 17-year-old William Green triggered demonstrations throughout the streets.⁵⁷

The War on Drugs, with its reliance on increased police militarization and racial profiling, added a new dimension to the struggle against discriminatory police violence during the last quarter of the Twentieth Century. As former Center for Constitutional Rights executive director Dr. Ronald Daniels explains, "[t]he 'war on drugs,' perhaps more than any other single factor, [] contributed to [a] wave of police brutality and misconduct" during this time.⁵⁸ By the 1990s, media were reporting a stream of police killings and beatings of Black people. In 1991, Los Angeles Police Department officers were caught on video repeatedly kicking Rodney King and beating him with batons more than 50 times. In 1992, Detroit officers beat Malice Green to death. In 1993, Prince Georges County officers shot Archie Elliot fourteen times while he was handcuffed and sitting in a police cruiser. In 1994, a New Orleans police officer shot and killed Kim Groves. In 1995, Pittsburgh police asphyxiated Jonny Gammage to death. In 1996, Brooklyn officers shot Aswan Watson 24 times while he was sitting in a car. In 1997, a New York police officer shot

⁵⁵ Jim Dwyer, *A Police Shot to a Boy's Back in Queens, Echoing Since 1973*, N.Y. Times (Apr. 16, 2015), <https://www.nytimes.com/2015/04/17/nyregion/fired-at-queens-boy-fatal-1973-police-shot-still-reverberates.html>.

⁵⁶ *Id.*

⁵⁷ *Jurors acquit Ziegler*, PHILA. INQUIRER (Oct. 11, 1980).

⁵⁸ Daniels, *supra* note 52, at 248.

Kevin Cedeno in the back. Later the same year, New York police officers horrifically assaulted and tortured Abner Louima. In 1998, officers in Riverside, California fired 24 shots at Tyisha Miller, who was sleeping in her car with a pistol in her lap. In 1999, New York officers killed Amadou Diallo, shooting him 41 times.⁵⁹ These examples are illustrative but certainly not exhaustive.

These tragic events sparked renewed calls to action. Mr. Gammage's killing prompted thousands of Black high school students to pour into the streets of Philadelphia. The Bay Area Police Watch held rallies and marches in front of San Francisco City Hall to "demand police reform in response to a rash of incidents of police brutality and police killings."⁶⁰ Mr. Watson's killing prompted action by the December 12 Movement; the National Action Network organized protests in response to Mr. Cedeno's killing; and Mr. Louima's assault prompted 10,000 people to march across the Brooklyn Bridge.⁶¹ Organizations including the National Lawyers Guild launched the Stolen Lives Project, an effort to document "people killed by law enforcement agents from 1990 to the present."⁶² Diallo's killing produced an unprecedented gathering of civil rights leaders, who planned a "National Emergency March for Justice/Against Police Brutality," held in April 1999. The march was endorsed by nearly 100 "local, regional, and national civil and human rights organizations and police reform advocacy groups," and was led by "scores of family members of victims of police brutality who journeyed to Washington, D.C., from as far away as Arizona and California to tell their stories."⁶³

⁵⁹ *Id.* at 242–44 (discussing these incidents); *see also* Amnesty Int'l, USA: Race, Rights and Police Brutality 9–12 (1999) (compiling additional examples of police shootings during the late-1990s), <https://www.amnesty.org/download/Documents/144000/amr511471999en.pdf>.

⁶⁰ Daniels, *supra* note 52, at 251.

⁶¹ *Id.*

⁶² *See* Stolen Lives Project, *Killed by Law Enforcement*, <https://www.stolenlives.org/index.html>.

⁶³ Daniels, *supra* note 52, at 252–55.

As this history shows, our nation has witnessed a seemingly unending cycle of vigilante and police violence against Black Americans, followed by organized activism in response. Black Lives Matter, and its primary aim of ending such violence, fits neatly within this story.

II. Black Lives Matter continues the long history of organized efforts to end vigilante and police violence against Black Americans.

While still a relatively new chapter in this story, Black Lives Matter has already inspired tens of millions of Americans to join the longstanding struggle to end vigilante and police violence against Black Americans.⁶⁴ Indeed, as the history above demonstrates, Black Lives Matter must be understood “within the context of [] unfinished earlier movements to end racial discrimination and achieve equality.”⁶⁵

A. Black Lives Matter emerged in response to police and vigilante violence against Black Americans.

Black Lives Matter emerged following the killing of 17-year-old Trayvon Martin. On the evening of February 26, 2012, Trayvon was walking through a residential Florida neighborhood when watch volunteer George Zimmerman, thinking Martin looked suspicious, approached him. After Zimmerman confronted Martin, he shot Martin in the chest. The following summer, Zimmerman was acquitted of all charges. The initial protests in response to Trayvon Martin’s killing “in many ways turned into a full-scale moment of reflection for all Americans, of all races, as to whether we as a nation have moved forward in our quest for equality among races.”⁶⁶ When Zimmerman’s acquittal was announced, community organizer Alicia Garza posted a message on

⁶⁴ Buchanan, *supra* note 2.

⁶⁵ Hillstrom, *supra* note 3, at 1.

⁶⁶ *Trayvon Martin Case Sparks Dialogue on Racial Inequality, Meaning of Justice*, CNN Blog (Mar. 22, 2012), http://news.blogs.cnn.com/2012/03/022/trayvon-martin-case-sparks-dialogue-on-racial-inequality-meaning-of-justice/comment-page-19/?hpt=hp_c1.

Facebook: “Black people. I love you. I love us. Our lives matter.”⁶⁷

Garza’s simple words caught wind on social media. Not long after, Garza, along with activists Patrisse Cullors and Opal Tometi, formed a fledgling movement using the hashtag #BlackLivesMatter. Soon thereafter, “[o]ther groups, organizations, and individuals used [the hashtag] to amplify anti-Black racism across the country.”⁶⁸ In the months that followed, this message was used to galvanize activism in response to the killings of Eric Garner,⁶⁹ John Crawford III,⁷⁰ Ezell Ford,⁷¹ Dante Parker,⁷² Laquan McDonald,⁷³ Tanisha Anderson,⁷⁴ 12-year-old Tamir

⁶⁷ AK Press, *Alicia Garza, The Purpose of Power: How We Come Together When We Fall Apart*, <https://www.akpress.org/purposeofpower.html>.

⁶⁸ Black Lives Matter, *Herstory*, <https://blacklivesmatter.com/herstory/>.

⁶⁹ See Katie Benner, *Eric Garner’s Death Will Not Lead to Federal Charges for N.Y.P.D. Officer*, N.Y. Times (July 16, 2019), <https://www.nytimes.com/2019/07/16/nyregion/eric-garner-case-death-daniel-pantaleo.html>.

⁷⁰ See Catherine E. Shoichet & Nick Valencia, *Cops Killed Man at Walmart, Then Interrogated Girlfriend*, CNN (Dec. 16, 2014), <https://www.cnn.com/2014/12/16/justice/walmart-shooting-john-crawford/index.html>.

⁷¹ See Ruben Vives et al., *After LAPD Officers Kill Mentally Ill Man, Activists Demand Answers*, L.A. Times (Aug. 14, 2014), <https://www.latimes.com/local/lanow/la-me-ln-lapd-kills-mentally-ill-man-activists-demand-answers-20140813-story.html>.

⁷² See Jeanne Kuang & Tony Shin, *Father of 5 Dies in Custody After Deputies Use Taser*, NBC Los Angeles (Aug. 14, 2014), <https://www.nbclosangeles.com/news/national-international/man-dies-in-deputies-custody-after-being-hit-with-taser/111040/>.

⁷³ See Josh Sanburn, *Chicago Releases Video of Laquan McDonald Shooting*, Time (Nov. 24, 2015), <https://time.com/4126670/chicago-releases-video-of-laquan-mcdonald-shooting/>.

⁷⁴ See Adam Ferrise, *Cleveland Police Officer Gets 10-Day Suspension in Tanisha Anderson’s Death*, Cleveland.com (Mar. 12, 2018), https://www.cleveland.com/metro/2018/03/cleveland_cops_suspended_for_r.html.

Rice,⁷⁵ Mya Hall,⁷⁶ Walter Scott,⁷⁷ Freddie Gray,⁷⁸ Sandra Bland,⁷⁹ and so many others.⁸⁰ But the movement truly leapt onto the national stage in the summer of 2014 after Ferguson, Missouri police officer Darren Wilson shot and killed 18-year-old unarmed Michael Brown.⁸¹ In response to Brown's killing, protestors assembled in Ferguson, and when they refused to disperse at nightfall, law enforcement fired tear gas into the crowds. As DeRay Mckesson described it, "nothing I saw looked like America to me."⁸² Inspired by the Freedom Rides of the 1960s, organizers staged "BLM Freedom Rides," bringing activists from across the country to Ferguson to discuss, and demand action on, issues relating to racial inequality and anti-Black violence.⁸³ Cullors described the moment as "a call to action for black people and their allies to fight for justice—not just for Brown and his family, but for all of us."⁸⁴ Since then, the movement has amassed a global presence,

⁷⁵ See Shaila Dewan & Richard A. Oppel, Jr., *In Tamir Rice Case, Many Errors by Cleveland Police, Then a Fatal One*, N.Y. Times (Jan. 22, 2015), <https://www.nytimes.com/2015/01/23/us/in-tamir-rice-shooting-in-cleveland-many-errors-by-police-then-a-fatal-one.html>.

⁷⁶ See Peter Hermann, *Baltimore's Transgender Community Mourns One of Their Own, Slain by Police*, Wash. Post (Apr. 3, 2015), https://www.washingtonpost.com/local/crime/baltimores-transgender-community-mourns-one-of-their-own-slain-by-police/2015/04/03/2f657da4-d88f-11e4-8103-fa84725dbf9d_story.html.

⁷⁷ See Alan Blinder, *Michael Slanger, Officer in Walter Scott Shooting, Gets 20-Year Sentence*, N.Y. Times (Dec. 7, 2017), <https://www.nytimes.com/2017/12/07/us/michael-slanger-sentence-walter-scott.html>.

⁷⁸ Justin Fenton & Jessica Anderson, *Freddie Gray Repeatedly Asked for Medical Care, Police Said Monday*, Baltimore Sun (Apr. 20, 2015), <https://www.baltimoresun.com/news/crime/bs-md-ci-freddie-gray-arrest-documents-20150420-story.html>.

⁷⁹ See Sophia Bollag & Ally Mutnick, *Sandra Bland Mourned From Illinois to Texas*, Tex. Trib. (July 29, 2015), <https://www.texastribune.org/2015/07/19/communities-across-country-mourn-sandra-blands-dea/>.

⁸⁰ See, e.g., Say Their Names, <https://sayevery.name/>.

⁸¹ Hillstrom, *supra* note 3, at 25.

⁸² *Id.* at 28.

⁸³ *Id.* at 29.

⁸⁴ Darnell L. Moore & Patrisse Cullors, *Five Ways to Never Forget Ferguson and Mike Brown*, The Guardian (Sept. 4, 2014), <https://patrissecullors.com/news/the-guardian-5-ways-to-never-forget-ferguson-and-michael-brown/>

inspiring tens of millions of people to join its ranks.⁸⁵

Despite its relative youth, Black Lives Matter has already achieved significant victories in its calls for investigations into discriminatory police violence and demands for policy reforms. Its focus on the criminal justice system's impact on Black Americans has succeeded in "plac[ing] the topic of police brutality and criminal justice reform at the top of the national agenda."⁸⁶ Following Mr. Brown's killing, the U.S. Department of Justice engaged in an exhaustive investigation into Ferguson's police practices, ultimately concluding that the city's "law enforcement practices are directly shaped and perpetuated by racial bias."⁸⁷ President Barack Obama also created the Task Force on Twenty-First Century Policing, which produced a report in May 2015.⁸⁸ It is estimated that, within just a year after the massive demonstrations in Ferguson, 40 new law were passed in 24 states directly addressing how citizens are treated by law enforcement officers.⁸⁹ The movement has also largely succeeded in continuing to amplify the names and stories of those who have been killed by police who otherwise would simply remain anonymous, including nationally recognized

⁸⁵ Buchanan, *supra* note 2.

⁸⁶ Clayton, *supra* note 38, at 475.

⁸⁷ U.S. Dep't of Justice Civil Rights Division, *Investigation of the Ferguson Police Department* 70 (Mar. 4, 2015), https://www.justice.gov/sites/default/files/opa/pressreleases/attachments/2015/03/04/ferguson_police_department_report.pdf.

⁸⁸ President's Task Force on 21st Century Policing, *Final Report of the President's Task Force on 21st Century Policing* (May 2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

⁸⁹ David A. Lief, *Ferguson Spurs Forty New State Measures; Activists Want More*, Assoc. Press, (Aug. 3, 2015), <https://apnews.com/2cd834a26ad146ceb04ba6f265566ec5/ferguson-spurs-40-new-state-measures-activists-want-more>; *see also* Hillstrom, *supra* note 3, at 34.

names such as Alton Sterling,⁹⁰ Philando Castile,⁹¹ Breonna Taylor,⁹² and George Floyd,⁹³ those listed in the paragraph above, and far too many others. While these successes are to be celebrated, much more is yet to be done.

B. Black Lives Matter and the Civil Rights Movement share the same basic demand: recognition of and respect for basic human dignity.

While Black Lives Matter is far from monolithic, and the specific policy reforms pursued by those acting under its banner vary, its basic demand remains the same: that society treat Black lives and bodies with the dignity to which all humans are entitled. The long history of police violence against Black Americans “conveys the message that Black people are now, as they have been throughout the history of this country, expendable,” and it reveals the reality that Black Americans, who still today are “burdened with a presumption of guilt and dangerousness,” are at risk of harassment, arrest, injury, or death at the hands of law enforcement.⁹⁴ Black Lives Matter seeks to reverse that narrative by continuing the “struggle for the human rights and dignity of black people in the U.S., which is tied to black peoples’ struggle for human rights across the globe.”⁹⁵

⁹⁰ See Wesley Lowery et al., *Outrage After Video Captures White Baton Rouge Police Officer Fatally Shooting a Black Man*, Wash. Post (July 6, 2016), <https://www.washingtonpost.com/news/morning-mix/wp/2016/07/06/video-captures-white-baton-rouge-police-officer-fatally-shooting-black-man-sparking-outrage/>.

⁹¹ See Bill Chappell, *Philando Castile is Remembered by St. Paul Public Schools: ‘Kids Loved Him’*, NPR (July 7, 2016), <https://www.npr.org/sections/thetwo-way/2016/07/07/485114263/philando-castile-is-remembered-by-st-paul-public-schools-kids-loved-him>.

⁹² See Tessa Duvall & Darcy Costello, *Breonna Taylor Was Briefly Alive After Police Shot Her. But No One Tried to Treat Her*, Louisville Courier J. (July 17, 2020), <https://www.courier-journal.com/story/news/crime/2020/07/17/breonna-taylor-lay-untouched-20-minutes-after-being-shot-records/5389881002/>.

⁹³ See Dionne Searcey, *At George Floyd Memorial, an Anguished Call for Change*, N.Y. Times (June 4, 2020), <https://www.nytimes.com/2020/06/04/us/floyd-memorial-funeral.html>.

⁹⁴ Bell, *supra* note 4, at 88; Stevenson, *supra* 6 at 4.

⁹⁵ Opal Tometi & Gerald Lenoir, *Black Lives Matter is not a Civil Rights Movement; It’s a Human Rights One*, Time (Dec. 10, 2015), <https://time.com/4144655/international-human-rights-day-black-lives-matter/>.

The Black Lives Matter Global Network explains that “Black Lives Matter is an ideological and political intervention in a world where Black lives are systematically and intentionally targeted for demise. It is an affirmation of Black folks’ humanity, our contributions to this society, and our resilience in the face of deadly oppression.”⁹⁶ And the network’s “mission is to eradicate white supremacy and build local power to intervene in violence inflicted on Black communities by the state and vigilantes.”⁹⁷ When the Movement for Black Lives created its first policy platform, its first demand was clear: “We demand an end to the criminalization, incarceration and killing of our people.”⁹⁸ Scholars similarly characterize Black Lives Matter as “a social movement rooted in the collective and individual experience of Black people in this country” that “encourages active resistance to the continuing dehumanization and devaluation of their lives” and demands that “everyone is entitled to their human dignity and due process.”⁹⁹

This basic purpose—demanding recognition of Black Americans’ humanity—has deep roots in the principles championed by activism predating Black Lives Matter, particularly in the Civil Rights Movement. Dr. King spoke often of demanding recognition of Black individuals’ “dignity and honor.”¹⁰⁰ From his jail cell in Birmingham, Dr. King wrote about the movement’s

⁹⁶ Black Lives Matter Global Network, Four-Year Anniversary Report 5, <https://drive.google.com/file/d/0B0pJEXffvS0uOHdJREJnZ2JJYTA/view>.

⁹⁷ Black Lives Matter Global Network Found., Inc., *About*, <https://blacklivesmatter.com/about/>.

⁹⁸ Jamilah King, *SNCC Legacy Project Endorses the Movement for Black Lives Policy Platform*, S.F. Bay View (Aug. 19, 2019), <https://sfbayview.com/2016/08/sncc-legacy-project-endorses-the-movement-for-black-lives-policy-platform/>.

⁹⁹ Clayton, *supra* note 38, at 449; Khalil G. Muhammad, *Civil Rights Activism, From Martin Luther King to Black Lives Matter*, NPR (Jan. 18, 2016), <https://www.npr.org/2016/01/18/463503838/civil-rights-activism-from-martin-luther-king-to-black-lives-matter>.

¹⁰⁰ *E.g.*, Martin Luther King, Jr., *Where Do We Go From Here: Address Delivered at the Eleventh Annual SCLC Convention* (Aug. 16, 1967), <https://kinginstitute.stanford.edu/king-papers/documents/where-do-we-go-here-address-delivered-eleventh-annual-sclc-convention>.

demand of “respect [for] the dignity and worth of human personality.”¹⁰¹ Discrimination and violence stand in the way of that goal, he explained, because they “relegat[e] persons to the status of things.”¹⁰² Indeed, as the Supreme Court later recognized, the “fundamental object” of the public-accommodations provisions of the Civil Rights Act of 1964—one of the Civil Rights Movement’s crowning achievements—“was to vindicate the deprivation of personal dignity” caused by discrimination.¹⁰³

At its most basic level, Black Lives Matter seeks to make the public aware that Black lives and bodies are still not treated equally in this country. Of course, its name puts the issue front and center, representing “a civic desire for equality and the human desire for respect, the intellectual roots of which lie deep in the history of black American thought.”¹⁰⁴ So do the refrains of the tens of millions of Americans who have joined Black Lives Matter demonstrations. One of their most iconic chants is “say their names,” demanding recognition that victims of police killings are not just figures to be included within statistics, but human lives that must be mourned.¹⁰⁵ Activists have also striven to name and give voice to the many Black female victims of police and vigilante violence, whose stories often get overlooked in this conversation.¹⁰⁶ The protest statement “I Can’t

¹⁰¹ Martin Luther King, Jr., Letter to Bishop C.C.J. Carpenter et al. (Apr. 16, 1963), *available at* http://okra.stanford.edu/transcription/document_images/undecided/630416-019.pdf.

¹⁰² *Id.*

¹⁰³ *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 250 (1964) (quoting S. Rep. No. 872, 88th Cong., 2d Sess. 16–17 (1964)).

¹⁰⁴ Christopher J. Lebron, *The Making of Black Lives Matter: A Brief History of an Idea* 3 (2017).

¹⁰⁵ *See Say Their Names*, *supra* note 80 (collecting information about Black victims of police and civilian violence in the United States).

¹⁰⁶ *See African Am. Pol’y Forum*, *Say Her Name: Resisting Police Brutality Against Black Women* (July 2015), http://static1.squarespace.com/static/53f20d90e4b0b80451158d8c/t/560c068ee4b0af26f72741df/1443628686535/AAPF_SMN_Brief_Full_singles-min.pdf (compiling information about Black women and girls killed by law enforcement in an effort to expand the traditional focus on men and boys).

Breathe”—the dying words of Eric Garner, George Floyd, and as many as 70 others killed by law enforcement officers in the last decade, more than half of whom were Black¹⁰⁷—similarly highlights that, still today, a Black person’s encounter with police can end in unjust and deadly violence. These words evoke the flag that often hung from a window of the NAACP’s headquarters, announcing to the world that “A Man Was Lynched Yesterday.”¹⁰⁸

III. The June 1, 2020 attack on protesters in Lafayette Square is reminiscent of attacks against Civil Rights Movement demonstrators.

On June 1, 2020, Black Lives Matter demonstrators assembled in Lafayette Square to protest the recent police killings of George Floyd and Breonna Taylor. A Minneapolis police officer had killed Mr. Floyd by kneeling on Mr. Floyd’s neck for eight minutes while Mr. Floyd pleaded for his life. Louisville police officers killed Ms. Taylor by shooting her at least six times after forcefully entering her home. As the protesters at Lafayette Square demonstrated peacefully, law enforcement officers fired tear gas, rubber bullets, and flash bangs into the crowd, and then physically charged at the demonstrators. Many demonstrators were injured, some severely.

The June 1 attacks recall those that activists have historically encountered when protesting violence against Black people. While such instances abound, the discussion below focuses on the experiences of participants in the Civil Rights Movement. As noted above, this focus is not meant to suggest that violent reactions to activism were limited to the mid-20th Century. To the contrary, such reactions have played a significant part in the cycle of violence described above. Nonetheless, for the many *amici* who experienced firsthand the violence described below, the events of June 1 have particular resonance.

¹⁰⁷ Mike Baker et al., *Three Words. 70 Cases. The Tragic History of “I Can’t Breathe”*, N.Y. Times (June 29, 2020), <https://www.nytimes.com/interactive/2020/06/28/us/i-cant-breathe-police-arrest.html>.

¹⁰⁸ See Library of Congress, *A Man Was Lynched Yesterday* (1936), <https://www.loc.gov/pictures/item/2015647092/>.

For any student of American history, the scenes in Lafayette Square on June 1, 2020, evoked images of Birmingham police officers' attack against those participating in the Children's Crusade of May 1963. On May 2, SCLC leadership led hundreds of children out of the 16th Street Baptist Church to demonstrate against segregation. Police immediately arrested the children, and by the end of the day, more than 600 were sitting in jail.¹⁰⁹ On the morning of May 3, more than a thousand students prepared to repeat this process. But when they left the church, Bull Connor's officers were waiting with firehoses. The hoses, "capable of knocking bricks loose from mortar or stripping bark from trees at a distance of one hundred feet" knocked the children to the ground and pinned them against walls.¹¹⁰ The hoses rolled a small girl down the middle of the street.¹¹¹ When the children scattered in a way that made the hoses less effective, the police emerged with K-9 units and unleashed them on the children.¹¹² The images of children being beaten by police, hit with high-pressure firehoses, and attacked by police dogs reverberated across the country.¹¹³

The events of June 1, 2020 also evoked images of perhaps the most infamous instance of police violence against civil rights demonstrators: the attack in Selma on March 7, 1965. As discussed above, this brutal attack followed the police killing of Jimmie Lee Jackson. In what would come to be known around the world as "Bloody Sunday," state troopers and local law enforcement, led by Sheriff Jim Clark, ambushed citizens with clubs and tear gas as those citizens peacefully marched across the Edmund Pettus Bridge. Many of the marchers were beaten to within an inch of their lives, including the late Congressman John Lewis, simply for attempting to

¹⁰⁹ Branch, *Parting the Waters*, *supra* note 20, at 757–78.

¹¹⁰ *Id.* at 759.

¹¹¹ *Id.*

¹¹² *Id.* at 760–61.

¹¹³ See Nat'l Museum of African Amer. Hist. & Culture, *The Children's Crusade*, <https://nmaahc.si.edu/blog/childrens-crusade>.

demonstrate peacefully.¹¹⁴

These events were far from isolated incidents. To the contrary, Civil Rights Movement demonstrators were routinely “met with violent opposition from white police officers and community members.”¹¹⁵ On September 15, 1963, 16-year-old Johnny Robinson and hundreds of others protested to demand justice in Birmingham after a bomb planted in the 16th Street Baptist Church killed four girls and severely injured another. As Robinson fled from hundreds of National Guardsmen and state troopers, he was shot dead in the back by Officer Jack Parker, who was never charged.¹¹⁶ In 1964, Mississippi police “facilitated the extrajudicial murders of civil rights workers Andrew Goodman, James Chaney, and Michael Schwerner.”¹¹⁷ Following their August 1965 arrests in Lowndes County, Alabama for demonstrating against segregation, *amici* Ruby Sales and Richard Morrisroe, along with Johnathan Daniels and others, were released without notice. When they reached a nearby store, Deputy Sheriff Tom Coleman stormed the group by shooting and killing Daniels—who had pushed Sales out of harm’s way—and then shooting Morrisroe in the back as he attempted to flee. Morrisroe survived after 11 hours of surgery. Coleman was acquitted of all charges against him.¹¹⁸

In June 1966, James Meredith, who integrated the University of Mississippi just a few years earlier, began a 220-mile march through Mississippi, in his words, “to challenge the all-

¹¹⁴ Branch, *At Canaan’s Edge*, *supra* note 50, at 49–57; Stanford Univ. Martin Luther King, Jr. Research and Education Inst., *Selma to Montgomery March*, <https://kinginstitute.stanford.edu/encyclopedia/selma-montgomery-march>.

¹¹⁵ Stevenson, *supra* note 6, at 22.

¹¹⁶ See Jin Hee Lee & Sherrilyn A. Ifill, *Do Black Lives Matter to the Courts?*, in *Policing the Black Man*, *supra* note 6, at 255.

¹¹⁷ Stevenson, *supra* note 6, at 22.

¹¹⁸ Branch, *Pillar of Fire*, *supra* note 48, at 303–04; S.L. Wisenberg, *How a Chicago Priest Became an Unwitting Civil Rights Figure*, *Chicago Reader* (Aug. 31, 2015), <https://www.chicagoreader.com/chicago/shooting-jonathan-daniels-richard-morrisroe-alabama-50th-anniversary/Content?oid=18915294>.

pervasive overriding fear” that Black Mississippians experienced when attempting to register to vote. On just the second day of his solo march, a white man intercepted Meredith and shot him repeatedly. Though Meredith survived the ambush, his weeks-long hospital recovery prevented him from continuing the march. Several organizations—the SCLC, the Congress of Racial Equality and SNCC—immediately organized to carry on the march. On June 23, as marchers attempted to pitch tents to rest for the evening in Canton, Mississippi, highway patrolmen attacked. Officers fired tear gas and assaulted men, women, and children with clubs. One reporter observed: “They were not arresting, they were punishing.” Nevertheless, the demonstrators persisted, and the march grew to over 15,000 participants by its conclusion in Jackson, Mississippi.¹¹⁹

In February 1968, in Orangeburg, South Carolina, patrolmen opened fire against Black students at a historically black university, killing three and wounding at least 28. The violence followed a week of student-led protests against segregation. On the evening of the incident, a group of students gathered on campus, started a bonfire to keep warm through the frigid night, and sang songs and chanted in protest—all while patrolmen, South Carolina National Guard members, local lawmen, and others patrolled the gathering. After someone threw a piece of wood at a patrolman, however, the officers opened fire on the students. The shooting continued even as the students fled for their lives; nearly every student that was shot was wounded in the back, the side, or through the soles of their feet.¹²⁰

¹¹⁹ The Student Nonviolent Coordinating Committee, *The Meredith March*, <https://snccdigital.org/events/meredith-march/>; Stanford Univ. Libraries, *Meredith March Against Fear, June 1966*, The Bob Fitch Photography Archive, <https://exhibits.stanford.edu/fitch/browse/meredith-march-against-fear-june-1966>; Branch, *At Canaan’s Edge*, *supra* note 50, at 490–91.

¹²⁰ Lorraine Boissoneault, *In 1968, Three Students Were Killed by Police. Today, Few Remember the Orangeburg Massacre*, *Smithsonian Magazine* (Feb. 7, 2018), <https://www.smithsonianmag.com/history/1968-three-students-were-killed-police-today-few->

That same year, in the wake of the horrific death of two Black sanitation workers in Memphis, thousands of sanitation workers organized a strike and ongoing peaceful marches to protest the horrendous working conditions, abuse, racism, and discrimination they faced each day. Organizers, including Dr. Martin Luther King, Jr., planned a demonstration, but after violence arose, the organizers ended the march and told demonstrators to retreat to a church. Police followed the marchers to the church, released tear gas, and clubbed people as they tried to escape the gas. The evening's violence culminated with police shooting and killing a sixteen-year-old child. The sanitation workers carried on the next day, marching with signs conveying a simple message: "I Am A Man." Just a few days later, Dr. King was assassinated.¹²¹

These few examples illustrate the danger that has always faced activists seeking equality for Black Americans. The June 1 attack in Lafayette Square was a regrettable new chapter in this history.

CONCLUSION

While Black Lives Matter has effectively used modern technology to spread its message seeking to end vigilante and police violence against Black Americans and demanding full access to all the rights our Constitution guarantees, the message itself is nothing new. To the contrary, Black Lives Matter is only the latest chapter in a long story of similar activism. The attack on protestors on June 1 in Lafayette Square is a tragic reminder of the violence past generations of activists have faced.

remember-orangeburg-massacre-180968092/; Coll. of Charleston, *The Orangeburg Massacre*, Lowcountry Digital History Initiative, <http://ldhi.library.cofc.edu/exhibits/show/orangeburg-massacre/oburg-massacre-page>.

¹²¹ Stanford Univ. Martin Luther King, Jr. Research & Educ. Inst., *Memphis Sanitation Workers' Strike*, <https://kinginstitute.stanford.edu/encyclopedia/memphis-sanitation-workers-strike>.

November 27, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that November 27, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which automatically serves notification of the filing on counsel for all parties.

/s/ Bruce V. Spiva _____

Bruce V. Spiva

APPENDIX: BIOGRAPHICAL INFORMATION FOR *AMICI*

Amicus Curiae Veterans of the Civil Rights Movement and Civil Rights Leaders comprise the following individuals:

Charles Avery, Jr. is a longtime resident of Jefferson County, Alabama. Mr. Avery's father was a labor and voting rights advocate. Widespread discrimination against Black residents in his rural community and the encouragement of family members prompted Mr. Avery to become active in the Civil Rights Movement. Undeterred by reports of police attacks involving firehoses and K-9 units, Mr. Avery—then the president of his senior class at Hooper City High School—led more than 800 of his fellow students in a march to Birmingham to join the ongoing Children's Crusade of May 1963. After reaching the 16th Street Baptist Church and receiving nonviolence training by SCLC leaders, Mr. Avery joined demonstrators on the streets of Birmingham. Police arrested Mr. Avery and kept him in custody for five days, making him one of the last of the arrested children to be released. Threats by the Ku Klux Klan forced Mr. Avery to leave Birmingham for Chicago a month later; he returned to Jefferson County in 1973.

Margaret Burnham is a University Distinguished Professor of Law at Northeastern University School of Law. She is the founder and director of the school's Civil Rights and Restorative Justice Project, which conducts research and supports policy initiatives on anti-civil rights violence in the United States and other miscarriages of justice between 1930 and 1970. Professor Burnham received a Bachelor's Degree from Tougaloo College and a Bachelor of Laws from the University of Pennsylvania Law School. She began her career at the NAACP Legal Defense and Educational Fund. In 1977, Professor Burnham became the first African American woman to serve in the Massachusetts judiciary. In 1993, Nelson Mandela appointed Professor Burnham to serve on an international human rights commission to investigate human rights violations within the African National Congress; that commission was a precursor to the Truth and Reconciliation Commission.

Clayborne Carson is the Martin Luther King, Jr., Centennial Professor of History at Stanford University, where he serves as the Ronnie Lott Founding Director of the school's Martin Luther King, Jr., Research and Education Institute. Dr. Carson received his undergraduate degree and Ph.D from the University of California, Los Angeles. In 1985, Coretta Scot King invited Dr. Carson to direct a long-term project for editing and publishing an authoritative edition of Dr. King's speeches and writings. This project culminated in the publication of a seven-volume series, *The Papers of Martin Luther King, Jr.*, and the founding of the King Institute at Stanford, which endows and expands the King Papers Project. Dr. Carson has also served as an advisor to and participant in several documentaries focusing on civil rights.

Hazel Dukes is President of the NAACP New York State Conference and a

member of the NAACP National Board of Directors. Dr. Dukes served as national president of the NAACP between 1989 and 1992. She has been a lifelong advocate for civil and human rights. Dr. Dukes received her undergraduate degree from Adelphi University and completed post-graduate work at Queens College. Born in Montgomery, Alabama, Dr. Dukes later moved to New York, where she became the first African American to work for the Nassau County Attorney's Office and Nassau County Economic Opportunity Commission. She has also been a longtime advocate for education reform. After decades of work in the New York City Off-Track Betting Corporation, she became its president in the early 1990s. Dr. Dukes has received numerous awards for her leadership, including a proclamation at the New York City Council's Third Annual Martin Luther King, Jr. Awards ceremony.

Mary Frances Berry is the Geraldine R. Segal Professor of American Social Thought, and Professor of History & Africana Studies at the University of Pennsylvania and the author of several books, spanning topics such as peaceful protest and social change. A life-long veteran of the civil rights and education reform movements, Dr. Berry has spent six decades as an activist, including protesting the Vietnam War and advocating for the Free South Africa and civil rights movements. She firmly believes that protest is an essential ingredient of politics. Dr. Berry co-founded the Free South Africa Movement, which worked to end apartheid in South Africa. On Thanksgiving Eve 1984, Dr. Berry was arrested outside the South African Embassy in Washington, D.C., for attempting to engage in a sit-in protest against the apartheid government's violent and discriminatory treatment of Blacks. Dr. Berry's protest sparked a nationwide movement against the South African government and the corporations tied to it inside the United States. Dr. Berry has also had a distinguished career in public service. From 1980 to 2004, she was a member of the U.S. Commission on Civil Rights, and from 1993 to 2004 served as Chair. Between 1977 and 1980, Dr. Berry served as the Assistant Secretary for Education in the U.S. Department of Health, Education, and Welfare. Dr. Berry received her Ph.D. in History from the University of Michigan, law degree from the University of Michigan Law School, and B.A. and M.A. from Howard University.

Wade Henderson is the former president and CEO of The Leadership Conference on Civil and Human Rights and The Leadership Conference Education Fund. During his time at the Leadership Conference, Mr. Henderson advocated for voting rights, criminal justice reform, equal access to education, transportation, public benefits, and employment, continuing his lifelong commitment towards fighting discrimination against people of color and people with disabilities. Mr. Henderson played a significant role in the passage of key civil rights legislation including the 2006 reauthorization of the Voting Rights Act, the Help America Vote Act, the Fair Housing Amendments Act, and others. Mr. Henderson is a graduate of Howard University and the Rutgers University School of Law.

Dolores Huerta is one of the most influential labor activists of the 20th Century and a renowned leader of the Chicano civil rights movement. Ms. Huerta began her career as an activist in 1955 when she co-founded the Stockton, California chapter of

the Community Service Organization, which led voter registration drives and advocated for economic improvement among Hispanics. She later founded the Agricultural Workers Association. In 1962, Ms. Huerta and César Chávez founded the National Farm Workers Association, the predecessor to the United Farm Workers' Union, of which Ms. Huerta served as Vice President until 1999. Through these organizations, Ms. Huerta has organized labor demonstrations, negotiated contracts, and advocated for safer working conditions and benefits for agricultural workers. Ms. Huerta has received many honors for her work, including the Eleanor Roosevelt Human Rights Award in 1998 and the Presidential Medal of Freedom in 2012.

Benjamin Jealous is a social justice leader who serves as the president of People for the American Way and People for the American Way Foundation. He previously served as president and CEO of the NAACP, executive director of the National Newspaper Publishers Association, and was the Democratic nominee for Governor of Maryland in 2018. In 2013, the Baltimore Sun named him Marylander of the Year for his work on, among other issues, marriage equality and death penalty abolition.

Martin Luther King III is a longtime human and civil rights advocate, the son of Dr. Martin Luther King, Jr. and Mrs. Coretta Scott King. He has served as a member of the Fulton County Board of Commissioners, the president of the Southern Christian Leadership Conference, and president and CEO of the King Center for Nonviolent Social Change. During Mr. King's leadership of the SCLC, the group focused on combatting police brutality. On the 57th anniversary of the 1963 March on Washington, Mr. King and Reverend Al Sharpton coordinated the 2020 March on Washington, which focused on police brutality and misconduct.

Marc Morial is the President and CEO of the National Urban League. Born in New Orleans, Mr. Morial went on to become the city's youngest mayor in 50 years, serving from 1994 to 2002. Mr. Morial served as President of the United States Conference of Mayors in 2001 and also as a member of the Louisiana State Senate from 1992 to 1994. Mr. Morial received his undergraduate degree from the University of Pennsylvania and his law degree from Georgetown University Law Center. Mr. Morial played a pivotal role in *Chisom v. Roemer*, a case in which the U.S. Supreme Court ultimately held that the Voting Rights Act applies to judicial elections. This lawsuit led to the election of the first Black justice of the Louisiana Supreme Court.

Richard Morrisroe has been an assistant city attorney and city planner for the City of East Chicago for over forty years. He is also an adjunct professor at Calumet College of St. Joseph, where he has taught courses in Business Ethics, Social Justice, and the Hebrew Bible, among others, since 1981. Mr. Morrisroe became involved in the Civil Rights Movement after being moved to action through Mr. King's vision of a peaceful and equal world, and by his own experiences serving in and learning more about Chicago's Black community. As part of Mr. Morrisroe's experience, he traveled to Fort Deposit, Alabama, to attend a protest challenging

measures against black customers in certain businesses. Within minutes, the activists were arrested and taken to Lowndes County jail twenty miles away for six days, at which time the protestors were abruptly released and forced away from the grounds at gunpoint. Mr. Morrisroe was with Episcopal martyr Jonathan Daniels, Ruby Sales, and Joyce Bailey upon his release, and the group headed to a store nearby. Sheriff's Deputy Tom Coleman was in the doorway and warned Ruby Sales of coming into the store, saying he would shoot. Daniels pulled Sales out of the way and was shot in the stomach by Coleman's 12-gauge shotgun. Morrisroe took the second shot and was left in the street to die. Both Mr. Daniels and Mr. Morrisroe were taken to Montgomery Baptist Hospital, where Daniels was pronounced dead and Morrisroe endured an 11-hour surgery and months of therapy to learn how to walk again. In 1972, Mr. Morrisroe resigned from the priesthood and married his wife, Sylvia. Mr. Morrisroe's experiences in the Civil Rights Movement were life-altering and he has carried these throughout his life, taking nothing for granted.

Ruby Sales is a nationally-recognized human-rights activist, public theologian, and social critic. Ms. Sales is the director and founder of the SpiritHouse Project, an organization that advocates for racial, economic, and social justice, and works to expose extrajudicial murders of African Americans by White vigilantes and police. Ms. Sales joined SNCC in the 1960s while at Tuskegee University. In 1965, Ms. Sales joined young activists in Fort Deposit, Alabama, to demonstrate against discriminatory business practices. After arresting Sales and other demonstrators, police released the group without notice, and the group walked to a nearby store. As they approached the store, Sheriff's Deputy Tom Coleman appeared and soon began shooting at the group. Seminarian Jonathan Daniels saved Ms. Sales's life, but sacrificed his, by pushing Sales out of the line of fire. Despite threats of violence, Ms. Sales was determined to attend Coleman's trial and testify on behalf of her slain colleague. Nonetheless, Coleman was acquitted by a jury of all white peers. Since that time, Ms. Sales has made the struggle for racial justice one of the centerpieces of her work. Since 2007, Ms. Sales has traveled around the United States to work with African American families to expose and seek justice for the police murders of their children and adult family members.

Marian Wright Edelman is the founder and president emerita of the Children's Defense Fund. She was the first Black woman to be admitted to the Mississippi Bar and, in Jackson, Mississippi, directed the NAACP's Legal Defense and Educational Fund. She has also served as counsel for the Poor People's Campaign, directed the Center for Law and Education at Harvard University, and founded the Washington Research Project, which is the parent body of the Children's Defense Fund.