

**AMNESTY
INTERNATIONAL**



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Larry Krasner
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Office of the District Attorney
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28 October 2020

Dear Commissioner Outlaw and District Attorney Krasner:

CASE OF WALTER WALLACE, JR.: USE OF LETHAL FORCE BY PHILADELPHIA POLICE OFFICERS

Amnesty International is writing to you to convey its deep concern about the lethal shooting of Walter Wallace, Jr., a 27-year-old Black man, on the afternoon of 26 October 2020 by officers of the Philadelphia Police Department (PPD). We urge your office to undertake a prompt, thorough, independent and impartial investigation into the circumstances on the use of lethal force in this case, that you keep the family and representatives of Walter Wallace, Jr. updated on the investigation's progress, and that PPD respect, protect and facilitate the right to peaceful assembly of the community impacted by this lethal incident.

Amnesty International is concerned about the use of lethal force by the PPD officers in this instance and whether de-escalation or the use of other tactics, such as verbal communication, time and distance as well as the use of less lethal devices could have prevented this tragic death. According to media reports and an excerpt of one video of the incident, PPD officers were called and responded several times to the home of Walter Wallace, Jr. in the Cobbs Creek neighborhood of West Philadelphia for domestic disturbance that day. While little information is known about the circumstances of the earlier responses, on the third call, officers were reportedly responding to a call for a man with a knife. According to one family member, police were called because Walter Wallace, Jr. was in mental health crisis. In Commissioner Outlaw's statement about the case, you mentioned that a new program to put a behavioral health specialist in the police dispatch center only operates during limited hours, and that the assigned counselor was not in the radio room at the time the call for service at Walter Wallace's house was made. There is little information known about what happened between the time when officers responded to the call and the time when the video began recording. One witness stated that Walter Wallace Jr.'s mother was informing officers that he suffers from mental health issues when Wallace exited the house immediately after with the knife. According to PPD statements, responding officers witnessed Wallace on the street with a knife and that he was "brandishing it, and waving it erratically". The video picks up the incident showing one officer and then a second officer, both with their firearms drawn, move from between parked cars along the street as they backed away towards the center of the street and proceeded to move further down the street away from an approaching Walter Wallace, Jr., yelling "put the knife down". Wallace's mother can be heard trying to diffuse the situation as the two officers train their

firearms at him out of view of the video. Walter Wallace, Jr. is then seen entering the street from between the two parked cars and moving towards the officers. The video then pulls off of the scene and briefly focuses towards the ground before the officers fired 10-12 shots at Walter Wallace, Jr., killing him. At no point in the video is Walter Wallace closer than 8-10 feet from the officers before he is shot. According to an official statement, one of the officers placed Walter Wallace in his vehicle and rushed him to Presbyterian Medical Center. According to reports, the officers were wearing body worn cameras and both officers involved in the shooting are now on desk duty pending an investigation.

The UN Human Rights Committee is the expert body established under the International Covenant on Civil and Political Rights (ICCPR) to monitor implementation of this core human rights treaty. The USA ratified the ICCPR in 1992. In its General comment 6 on the right to life under the Covenant, the Committee stated that “The deprivation of life by the authorities of the State is a matter of the utmost gravity” and that states must take measures to prevent arbitrary killing by their own security forces. Such measures are set out in the United Nations Basic Principles on the use of Force and Firearms by Law Enforcement Officials, Principle 9 of which states:

“Law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life” (emphasis added).

Amnesty International believes that the video footage raises serious doubts as to whether at the point Walter Wallace, Jr. was shot he presented “an imminent threat of death or serious injury”, still less that multiple bullets were “strictly unavoidable in order to protect life”.

Amnesty International seeks your assurance that the investigation into this incident will conform to the highest standards for investigating officer-involved shootings, and that all relevant evidence, including any official and bystander videos of the incident, medical records and witness testimony, will be made available to it. The family and representatives of Walter Wallace, Jr. should be updated on the progress of the investigation throughout. We urge that a report of the findings be made public as soon as possible, with information on the scope of the investigation, procedures and methods used to evaluate evidence, as well as conclusions and recommendations. We also seek your assurance that any officer found responsible for unlawful use of force will be held accountable in disciplinary and criminal proceedings as appropriate.

Accountability is also an essential part of redress. Under international law, anyone whose rights have been violated has the right to remedy. In a case involving death or grave injury in custody or as a result of lethal force, the family has that right to remedy. The UN Human Rights Committee has stated:

Article 2, paragraph 3, requires that in addition to effective protection of Covenant rights States Parties must ensure that individuals also have accessible and effective remedies to vindicate those rights. ... Administrative mechanisms are particularly required to give effect to the general obligation to investigate allegations of violations promptly, thoroughly and effectively through independent and impartial bodies. A failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant...

Where the investigations referred to [above] reveal violations of certain Covenant rights, States Parties must ensure that those responsible are brought to justice. As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. These obligations arise notably in respect of those violations recognized as criminal under either domestic or international law, such as ... summary and arbitrary killing...

With regard to the principle that police may use force only when strictly necessary, Principle 2 of the Basic Principles on the Use of Force and Firearms states that “Governments and law enforcement agencies should develop a range of means as broad as possible and equip law enforcement officials with various types of weapons and ammunition that would allow for a differentiated use of force and firearms”. Having available such a range of weapons, and the training to use them, means that police are in a better position to use only such force as is necessary in the particular circumstances.

Amnesty International does recognize spontaneous demonstrations took place in Philadelphia following the shooting death of Walter Wallace, Jr. At around 9:30 p.m., protesters were marching through the streets of West Philadelphia, with a parade of vehicles honking behind them. Just after 11 p.m., video showed police officers using batons as they clashed with a large group of people on a residential street. The person who recorded the video, said the police “started forcefully pushing back the crowd and beating anyone who wouldn’t back up.” Reports also indicate that a number of officers suffered injuries due to the throwing of projectiles, such as rocks and bricks. At least 91 people were arrested on Monday night. Additional protests are likely to occur in the ensuing days and nights. Such demonstrations are common following a tragic event in normal times, officers should take particular care to facilitate people’s freedom to peacefully protest during a crisis such as the ongoing pandemic.

Any decision to disperse an assembly must be taken only as a last resort and carefully in line with the principles of necessity and proportionality; that is, only when there are no other means available to protect a legitimate aim and when the level of threat of violence outweighs the right of people to assemble. Ensure that even in situations in which a small minority tries to turn a peaceful assembly into a violent one, police take steps to enable those who are protesting peacefully to continue to do so and refrain from using the violent acts of a few as a pretext to restrict or impede the exercise of rights by the majority of protesters. Similarly, the type of equipment used for the purpose of dispersing protesters is carefully considered and used only when necessary, proportional and lawful. Chemical agents such as tear gas, should only be used in situations of generalized violence for the purpose of dispersing a crowd when all other means have failed to contain the violence; cannisters should not be fired directly at individuals and tear gas should not be used in confined spaces against unarmed people or in situations in which exits and ventilation points are restricted. The use of such chemicals must always be preceded by an oral warning that is audible to the protesters and sufficient time for those assembling to disperse voluntarily. Chemical Irritants should not be launched near people at high risk, such as older people, pregnant people and children, and strong consideration should be given before it is used in densely populated areas. The use of firearms to disperse an assembly is always unlawful.

In light of the health risks associated with COVID-19, law enforcement should avoid detaining people for low-level offences related to non-violent, protest-related activities wherever possible and only resort to detention where absolutely necessary. Processing additional people through local jails at the height of a nationwide health pandemic in these circumstances places people’s lives unnecessarily at risk, as prisons and jails have become hotspots for COVID-19 throughout the

country. Local jails have often been hot spots within cities battling COVID-19, continuing to increase even when those cities' numbers of infections have decreased. There is no way to socially distance or maintain safe hygiene in city jails, which are notoriously overcrowded.

These measures regarding the right to freedom of peaceful assembly, need to be carefully considered in light of documented evidence of police violence by PPD officers against protesters during the days following the torture and extrajudicial execution of George Floyd in Minneapolis, Minnesota. In its report, *The World is Watching: Mass violations by U.S. police of Black Lives Matter protesters' rights*, Amnesty International documented several incidents of excessive use of force and the excessive and inappropriate use of tear gas and pepper spray against peaceful protesters in situations where protesters either didn't have a path to disperse or heavily concentrated in residential neighborhoods, severely impacting the residents of those communities. Most notably, on 1 June, Pennsylvania State Police and Philadelphia Police created a dangerous situation with the use of tear gas and other chemical irritants on protesters on the Vine Street Expressway, trapping peaceful protestors on an inclined embankment with no avenue to safely disperse. A copy of this report was previously sent to Commissioner Outlaw's office and has been attached to this letter for your review.

Lastly, under Pennsylvania's use of force statute, 18 Pa.C.S.A. §508, law enforcement is authorized to use lethal force to suppress a "riot". This statute is in violation of international law and standards because the statute fails to comply with the principle of proportionality as it does not require that officers face an imminent threat of death or serious bodily injury before resorting to lethal force in such circumstances. We seek your assurances that PPD officers will not resort to the use of lethal force to disperse any assemblies.

Considering the nature of this incident and the protests that have taken place in Philadelphia following the shooting, it is imperative that your office conduct this investigation promptly, thoroughly, independently and impartially and that your office keeps the family and representatives of Walter Wallace, Jr. updated on its progress. We also seek your assurances that PPD officers will respect, protect and facilitate the right to peaceful assembly of the residents of Philadelphia. As mentioned above, we included in our email a copy of the *World is Watching* report which also includes an addendum on best practices for the policing of demonstrations to ensure protection of the right to freedom of peaceful assembly.

I thank you for your serious consideration of our concerns and look forward to your response.

Yours sincerely,



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