21-11 - Berg vs. County of Los Angeles: Preliminary Injunction Regarding the Use of Less-Lethal Munitions During Civil Disorder

Los Angeles County Sheriff's Department

NEWSLETTER

Field Operations Support Services

BERG VS. COUNTY OF LOS ANGELES:

PRELIMINARY INJUNCTION REGARDING THE USE OF

LESS-LETHAL MUNITIONS DURING CIVIL DISORDER

PURPOSE

To inform Department personnel of an impending preliminary injunction affecting the Department's use of less-lethal munitions during civil disorder incidents. A preliminary injunction is a temporary court order issued during a lawsuit that prevents certain conduct until the conclusion of the trial or until the court issues further directions.

BACKGROUND

The Department has long facilitated the right for citizens to peaceably and lawfully assemble and speak as guaranteed by the First Amendment of the Constitution of the United States.

On July 6, 2021, a Federal Court entered a preliminary injunction regarding the Department's use of less-lethal munitions during civil disorder incidents, which shall go into effect on August 1, 2021. Below is a summary of some of the key points from the injunction:

- Reasonable, proportional, and targeted use of less-lethal munitions may be used when necessary to:
    - Protect against a specific imminent threat of physical harm to individuals (including deputies);
    - Respond to specific acts of violence or destruction of property; or
    - Enforce a declaration of unlawful assembly and dispersal order.
- Consistent with Department training, target-specific less-lethal rounds shall not be indiscriminately fired. Personnel are to target imminent assaultive/high-risk subjects with target-specific less-lethal rounds with an aim point of the belt buckle and below to minimize the risk of permanent or lethal injury;
- Targeting of an individual with a non-target-specific munition is prohibited;
- Attempts to remove, surpass, or defeat a protective barrier (including the barrier wire commonly

deployed by the Sheriff's Response Team) may be considered a threat to deputies;

- When feasible, warnings, unlawful assembly and/or dispersal orders shall be given and repeated prior to the proportional use of less-lethal munitions or chemical agents;
- Whenever feasible, these warnings must be given by means reasonably calculated to ensure these warnings are heard; and
- When warnings are given, reasonable time shall be given to comply.

The preliminary injunction in its entirety is attached. All Department personnel that may be called upon to deploy less-lethal weapons at civil disobedience incidents shall read and understand ALL of the provisions contained in this preliminary injunction.

It is each unit commander's responsibility to insure this injunction is briefed to all personnel before August 1, 2021. It is recommended that these briefings be documented.

If you require further information, contact Field Operations Support Services at [REDACTED TEXT]

ATTACHMENTS

Less Lethal Weapons Injunction

REFERENCES

MPP 3-10/100.00 Use of Force Reporting - Department Member Responsibilities

MPP 5-06/030.00 Crowd and Riot Control

MPP 5-06/030.05 Tactical Operations

Injunction

Pursuant to the Court's Order granting Plaintiffs' Motion for Preliminary

Injunction issued on May 28, 2021 [Doc. # 54], the Court ORDERS that the following

Preliminary Injunction shall go into effect on August 1, 2021, at 12:00 p.m.:

1. The Los Angeles Sheriffs' Department is hereby enjoined from using less-lethal weapons, including foam rounds, pepper balls, tear gas canisters, flash bang grenades, and stinger grenades, against any persons peacefully attending a protest, march, or other lawful gathering unless reasonable, proportional, and targeted action is necessary to protect against a specific imminent threat of physical harm to officers or identifiable others, to respond to specific acts of violence or destruction of property, or to enforce a declaration of unlawful assembly and dispersal order pursuant to California Penal Code section 409.1

a. If reasonable, proportional, and targeted use of less-lethal projectiles or chemical agents is necessary, foam rounds and any projectile designed to be target-specific shall be aimed at individuals causing the actual or imminent threats of harm, violence, or destruction of property and shall not be indiscriminately fired.

b. Flash bang grenades, tear gas canisters, and other less-lethal means designed to be non-target-specific may be used in the manner they were designed to be used and shall not be deliberately aimed to strike individuals.

1. When individuals try to remove, surpass, or defeat a protective police barrier, the Los Angeles Sheriff's Department may consider such actions a threat to officers.

2. Whenever feasible, Los Angeles Sheriffs' Department officers shall issue warnings and/or declare unlawful assembly before the reasonable, proportional, and targeted use of less-lethal projectiles or chemical agents.

a. Warnings must be given and repeated by means reasonably calculated to ensure that the warnings are heard.

b. When warnings are given, reasonable time shall be given to comply.

IT IS SO ORDERED.

DATED: July 6, 2021

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DOLLY M. GEE

UNITED STATES DISTRICT JUDGE

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