



Chesa Boudin
District Attorney

Policy Directive

San Francisco District Attorney's Office

Right to Peaceful Public Assembly

June 1, 2020

I. INTRODUCTION

The right to gather in peaceful protest is explicitly guaranteed by the First Amendment.¹ Courts have long recognized that public dissent is crucial to a functioning democracy, precisely because it provokes discussion and invites social change.²

From abolition to the civil rights movement to the movement for LGBTQ equality, many of our greatest social justice advances have been set in motion through public dissent, civil disobedience and demonstration.³ In this tradition, the recent Black Lives Matter demonstrations following the killing of George Floyd by a Minneapolis Police Officer have sparked a long-overdue public reckoning with the nature of policing in this country, and with police violence towards people of color.

The San Francisco District Attorney's (SFDA) Office is committed to protecting the fundamental right to peaceful public assembly. In San Francisco and across the nation, peaceful protestors are routinely arrested for low-level non-violent criminal offenses such as curfew violations, disturbing the peace, unlawful assembly, or delaying a police officer.⁴ Unless the offenses involve violence or the clear and present danger of imminent violence, such arrests commonly conflict with the Constitutional right to free speech and assembly.⁵

¹ U.S. Const. amend I. ("Congress shall make no law abridging "the right of the people peaceably to assemble...")

² *Edwards v. South Carolina* (1963) 372 U.S. 229, 237. (Public speech "may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.")

³ See, e.g., Martin Luther King Jr., *Letter from the Birmingham Jail* (1963).

⁴ See Tabatha Abu El-Haj, *Defining Peaceably: Policing the Line Between Constitutionally Protected Protest and Unlawful Assembly* (2015) 80 Mo. L. Rev. 961, 977.

⁵ *In re Brown* (1973) 9 Cal. 3d 612, 623. See also *Brown v. Louisiana* (1966) 383 U.S. 131; *Cox v. Louisiana* (1965) 379 U.S. 536; *Edwards v. South Carolina*, *supra*.

II. POLICY

The SFDA Office will not prosecute the peaceful exercise of First Amendment rights. Therefore, absent extraordinary circumstances, the SFDA Office will decline to file charges for low-level non-violent criminal violations stemming solely from peaceful protest activity.

This policy includes, but is not limited to, violations of California Penal Code sections 148(a)(1), 403-410, 415-416, 602, and 602.1, California Government Code section 8665, California Vehicle Code section 2800, San Francisco Police Code sections 22-27, 374, and 2909, and San Francisco Administrative Code section 7.17.

This policy does not encompass cases involving threatened or actual bodily injury, destruction or theft of property, or actions intended to prevent others from exercising their constitutional rights.

III. DATA COLLECTION

All ADAs shall assist with the District Attorney's Office procedures to collect data related to this policy. Any case that is discharged or dismissed because of this policy shall be recorded. The data will be analyzed to evaluate the effectiveness of this policy, and to ensure that the policy is applied consistently. Additionally, the data will be shared with the arresting agencies as a feedback to them for training purposes.