GUIDING PRINCIPLES FOR CROWD MANAGEMENT
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GUIDING PRINCIPLES FOR CROWD MANAGEMENT

Across the United States, the relationship between law enforcement agencies (LEA) and Black, Latinx, and Native communities has been fraught with tension and distrust. After the killing of George Floyd in Minneapolis on May 25, 2020, mass demonstrations advocating for racial justice and against police brutality have swept the nation. While these demonstrations have been largely peaceful, some have been marked by incidents of vandalism or arson, and some individuals have thrown rocks, bottles, fireworks, traffic cones, traffic flares, or other objects at police officers. At the same time, some police departments have faced public criticism, as well as legislative and judicial rebuke, for inflammatory tactics used in response to these demonstrations.¹

In light of recent mass demonstrations in cities and towns across the nation, CPE produced this set of guidelines to assist law enforcement agencies in aligning their policies with best practices around de-escalation and use of force in crowd management events. The guidelines are informed by two foundational obligations of law enforcement during these events: (1) the obligation to protect the First Amendment rights of demonstrators and counter-demonstrators, and (2) the obligation to ensure the safety of all persons involved in or affected by these demonstrations by implementing safe, responsible approaches to crowd management. We also highlight the need to partner with community in determining and implementing effective crowd management strategies. We encourage departments to align with the following best practices to ensure constitutionally protected political expression in a manner that serves the goal of public safety and enhances public trust.
GUIDING PRINCIPLES FOR CROWD MANAGEMENT:

SUMMARY OF RECOMMENDATIONS

We recommend that law enforcement agencies amend their policy manuals to implement the following principles and best practices for crowd management.

Partner with communities on crowd management

1 Partner with communities to produce policy guidelines on whether and when police officers should respond to crowd management events, and when their presence may be unneeded or inflammatory.

2 When a law enforcement agency is aware of a planned crowd management event, ensure that the designated police leadership in charge of incident response invite the organizers of the demonstration, if known, to meet and discuss the event objectives, set plans for route and timing, and identify strategies to prevent the escalation of disruptive behavior by individuals in the crowd.

3 Partner with communities to implement the policies and practices recommended in these guidelines.

Expressly affirm protection of the First Amendment

4 Expressly affirm officers’ sworn duty to protect the First Amendment, including the free speech and assembly rights of peaceful demonstrators.

Precisely define crowd management events

5 Provide precise definitions for crowd management scenarios and events.

Prioritize de-escalation

6 Expressly affirm de-escalation as a core principle of crowd management. Brief and retrain all officers in de-escalation principles and practices for crowd management events.

7 Prohibit the routine deployment of SWAT teams and routine use of riot gear and other civil disturbance clothing or gear in response to crowd management events, except where the Incident Commander (or other officer in charge of crowd management response) deems it absolutely necessary to prevent loss of life or grievous bodily harm.

8 Prohibit the use of racist, insulting, or obscene language or gestures toward demonstrators, counter-demonstrators, or anyone else present at a demonstration.

9 Monitor and respond to verbal conflicts between demonstrators and individual police officers before the situation escalates.

10 Expressly prohibit the use of vigilantes, armed groups, or anyone who is not a police officer for crowd management (in light of recent media reports that some LEAs have invited armed counter-demonstrators to assist police with crowd management, use of force, and arrests).
Specify the conditions that warrant crowd dispersal

11 Affirm that crowd dispersal should not be used as a preventive measure or as a response to individual violence or unlawful behavior by individuals in a crowd.

12 Do not arrest demonstrators unless reasonable and probable grounds exist to charge them with serious criminal offenses. Mass arrests should not be used for crowd management.

13 Specify the conditions in which a crowd may and may not be ordered to disperse. A crowd management event should be dispersed only if the crowd presents an immediate risk to public safety, or widespread violence or property destruction appears imminent.

14 Require that, when ordering a crowd to disperse, the order to disperse must be made audible to the entire crowd and, if possible, repeated; it must specify the offenses that justify dispersal of the crowd; it must specify avenues by which the crowd is to disperse; and the crowd must be given an opportunity to comply before force is used.

Constrain use of force

15 Prohibit deploying kinetic impact projectiles into a crowd for any purpose, and prohibit the use of less lethal weapons (such as tear gas, smoke bombs, flashbangs, pepper balls, mace, and other chemical agents) to control peaceful crowds and individuals who are not posing any immediate threat of serious harm.

16 Prohibit any practice in which demonstrators are boxed in or guided to an area from which all avenues of egress are blocked (sometimes referred to as “kettling”).

17 Ensure that the Incident Commander assigns a supervising officer, at the rank of lieutenant (or equivalent) or higher, to the Incident Command post to review and respond to serious use-of-force incidents in real time.

Mandate medical assistance

18 Make clear, explicit, and mandatory the obligation to provide and call for medical assistance for persons injured at demonstrations (whether they are injured by officers’ use of force or otherwise).

Permit observation and recording of police and demonstrations

19 Permit journalists, legal observers, and laypersons to observe and record officers’ behavior during demonstrations as well as at other times; observers who position themselves in an area that is closed to the public, or in a way that hinders police officers from performing their duties, should be asked to move, not to stop observing or recording.

Coordinate joint action and training for mutual aid

20 Ensure that every multijurisdictional agreement or mutual aid plan includes an agreement by all LEAs to abide by constitutional rules, state and local laws, and departmental policies of the jurisdiction where a crowd management event takes place.
Ensure officer accountability

21 Amend policy manuals to require that badges, nameplates, and other personal and agency identifiers be made visible at all times on the outside of each officer’s helmet or uniform, and that every officer provide their surname, badge number, rank, and law enforcement agency verbally upon request.

22 Ensure that when a person is arrested at a crowd management event, the arresting officer is in uniform, if possible. Require that any plainclothes officer who is involved in an arrest must a) show the arrestee an official badge that identifies the arresting officer as a police officer and identifies their LEA and badge number, and b) immediately request the attendance of a uniformed officer.

23 Ensure that anyone assigned to crowd management duty is a sworn police officer who has received training in crowd management and de-escalation. Unidentified persons, untrained persons, and persons who are not sworn police officers shall not be deployed for this purpose.

24 Ensure that officers comply with judicial decisions, municipal bylaws, state and federal laws, and directives from municipal governments and police chiefs with respect to methods of crowd control.

Protect officer and public health

25 Consult with public health departments, civil liberties organizations, and community groups to identify best practices for infectious disease control in police activities.

26 Where departmental rules or state, local, or federal laws impose social distancing requirements or require that masks be worn, ensure that police officers (and non-police civilian employees) comply with them.

27 Where departmental rules or state, local, or federal laws impose social distancing requirements on the transport and detention of arrested persons, ensure that police officers (and non-police civilian employees) comply with them.
The guidance provided in this document is informed by two foundational obligations of law enforcement during crowd management events specific to mass protest and political assembly: (1) the obligation to protect the First Amendment rights of demonstrators and counter-demonstrators, and (2) the obligation to ensure the safety of all persons involved in or affected by these demonstrations by implementing safe, responsible approaches to crowd management. Similarly, the International Association of Chiefs of Police (IACP) indicates that crowd management procedures should aim—as their primary goal—to protect the life, constitutional rights, and safety of demonstrators, counter-demonstrators, and the public, and should also protect property. To work toward these objectives, we recommend that LEAs amend their policy manuals to be guided by the following principles.

**Partner with communities on crowd management**

1. **Partner with communities to produce policy guidelines on whether and when police officers should respond to crowd management events, and when their presence may be unneeded or inflammatory.** Each department should conduct consultations with communities with the aim of identifying circumstances where police presence at peaceful demonstrations may tend to escalate tensions or increase the risk of violence. Based on these consultations, the department should adopt crowd management policy rules that:

   - **A** Specify circumstances in which law enforcement presence at an event is necessary, and when its presence may be unneeded or may escalate tensions;
   - **B** Offer actionable guidelines about how to balance these risks against the capacity of officers to maintain public safety at such events; and
   - **C** Affirm that the LEA response to dynamic crowd events shall use the least confrontational tools and strategies that will keep demonstrators and all other affected persons safe in the circumstances. This will allow police to facilitate First Amendment expression while responding to shifting crowd dynamics.

2. **When a LEA is aware of a planned a crowd management event, ensure that the Incident Commander (or other designated police leadership in charge of incident response) invites the organizers of the demonstration, if known, to meet with the Incident Commander to discuss the event objectives, set plans for route and timing, and identify strategies to prevent the escalation of disruptive behavior by individuals in the crowd.** The IACP notes, “When lines of communication have been maintained between event organizers or leaders and a law enforcement liaison, it is sometimes possible to negotiate a resolution to the situation. Given such situations, many crowds tend to become self-enforcing to ensure that they can continue to assemble and convey their message.”

   When meeting or communicating with event organizers to plan for the event, Incident Commanders or designated police leadership should communicate that the police are there to ensure the right to demonstrate and to keep everyone safe; explain the circumstances that would lead to police intervention; and exchange cell phone numbers. Prior cooperation between the LEA and demonstrators will assist event organizers and participants to facilitate timely de-escalation during the event.

3. **Partner with communities to implement the policies and practices recommended in these guidelines.** While model policies, templates, and recommendations can provide a helpful starting point, we strongly advise law enforcement agencies to consult the affected communities when creating or revising policies as recommended in these guidelines. The long-term establishment of cooperative, productive communication between police (leadership and officers) and affected communities tends to build mutual trust that can help both police and community members stay calm during crowd management events and other police-community encounters.
Expressly affirm protection of the First Amendment

4 Expressly affirm officers’ sworn duty to protect the First Amendment, including the free speech and assembly rights of peaceful demonstrators. Police officers throughout the nation are sworn to support the U.S. Constitution. The First Amendment to the U.S. Constitution protects freedom of speech, freedom of assembly, freedom of the press, and freedom to “petition the government for redress of grievances.” These freedoms include, in particular, the right to criticize governments and police, even if the criticisms are harsh, profane, or unfair. Thus every LEA’s crowd management policy should begin by affirming the following obligations and commitments:

A The rights to free speech, assembly, and freedom of the press, as well as the right to petition the government for redress of grievances, are protected by the First Amendment to the U.S. Constitution.

B The objective of LEA crowd management response is to ensure that demonstrators are able to exercise their First Amendment rights, while preserving public order and the safety of all persons, including demonstrators, counter-demonstrators, and the general public.

AFFIRM OFFICERS’ DUTY TO PROTECT FIRST AMENDMENT RIGHTS

Precisely define crowd management events

5 Provide precise definitions for crowd management scenarios and events. Crowd management policies should define terms precisely, in ways that acknowledge the First Amendment rights of demonstrators and counter-demonstrators, as well as the obligation of police to ensure the safety of demonstrators, counter-demonstrators, bystanders, and anyone else who may be affected by the event. The definitions section of a crowd management policy should define key terms in accordance with the following guidelines:

A Crowd management event (as distinct from a group of persons that does not require police supervision or intervention);

B First Amendment assembly (for example, a “demonstration, rally, parade, march, picket line, or other similar gathering conducted for the purpose of expressing political, social, or religious views, whether planned or unplanned”);

C Lawful and unlawful assemblies (specifying that violations of permit or curfew laws do not in themselves make an assembly unlawful);

D Peaceful demonstrations (specifying that isolated acts of violence or property damage do not make an otherwise peaceful demonstration a civil disturbance);

E Civil disturbance (encompassing a crowd that presents a high risk of widespread violence or widespread property destruction, and specifying that isolated acts of violence or property damage do not qualify); and

F High likelihood of widespread violence (encompassing crowd management events where many or most members of the crowd engage in violence or property destruction, and excluding isolated acts of lawbreaking or violence, such as a small number of persons in a crowd throwing projectiles or breaking windows).
The definitions of these terms should be specific and precise. Overbroad definitions, such as “a group of four persons or more,” could apply to social gatherings and could confer discretion that could risk the application of crowd management tactics, such as orders to disperse, when they are not warranted.6

Prioritize de-escalation

6 **Expressly affirm de-escalation as a core principle of crowd management.** A department’s crowd management policy should explicitly affirm that de-escalation is a guiding principle of the policy, and should cross-reference provisions in departmental use-of-force policies that encourage or require de-escalation. The Task Force on Twenty-First Century Policing and the IACP recommend that crowd management response should “focus on conveying the message that law enforcement is there to protect crowd participants and their right to demonstrate peacefully.”7 All officers should be briefed and retrained in de-escalation principles and practices for crowd management events.

7 **Prohibit the routine deployment of SWAT teams, and routine use of riot gear and other civil disturbance clothing or gear in response to crowd management events, except where the Incident Commander (or other officer in charge of crowd management response) deems it absolutely necessary to prevent loss of life or grievous bodily harm.** The initial response to crowd management events should involve ordinary uniformed officers. Officers in civil disturbance clothing or gear should not be deployed in response to nonviolent crowds, nor to isolated acts of violence or unlawful behavior within an otherwise nonviolent crowd. Because the use of riot gear can “escalate tensions and anxiety”8 and “undermine civilian trust,”9 both the IACP and the Task Force on Twenty-First Century Policing recommend that a crowd management response should “minimize the appearance of a military operation.”10 The IACP recommends that civil disturbance gear and related equipment should be staged—placed at the ready, out of sight of demonstrators—at key locations, rather than being issued initially in crowd management situations.11

LEAs throughout the nation have been criticized for aggressive and militarized responses to demonstrations that were largely nonviolent.12 The Task Force on Twenty-First Century Policing cautions that “when officers line up in a military formation while wearing full protective gear”13—as happened frequently during the recent demonstrations in Aurora, Buffalo, Louisville, New York, Seattle, and other cities14—their presence and demeanor “may have a dramatic influence on how the crowd perceives them and how the event ends.”15

Crowd management policies should state as follows:

A The initial response to a crowd management event should be police officers in ordinary uniform;

B Civil disturbance clothing, gear, and teams may be staged at a nearby location, out of sight of demonstrators, in case the need for them arises;

C The use of riot gear, SWAT teams, or militarized tools or hardware is permissible only where the Incident Commander (or other officer in charge of crowd management response) deems it absolutely necessary to prevent loss of life or grievous bodily harm; and

D Isolated acts of lawbreaking or violence, such as demonstrators throwing projectiles or breaking windows, do not constitute “widespread violence” (see definition guidelines in Recommendation 5(f), above) and should be dealt with by individualized response to the lawbreaking individual.
8 Prohibit the use of racist, insulting, or obscene language or gestures toward demonstrators, counter-demonstrators, or anyone else present at a demonstration. Police officers on demonstration duty have been photographed flipping the middle finger, making white supremacist hand gestures, and slashing demonstrators’ tires. Other officers have been observed offering verbal support and encouragement to white supremacist counter-demonstrators and even enlisting counter-demonstrators to assist with the law enforcement demonstration response. Community trust is undermined when police officers appear hostile to community members and appear to attack demonstrators whose political message is critical of police.

9 Monitor and respond to verbal conflicts between participants and individual police officers before the situation escalates. Where, for example, an individual officer is subjected to verbal abuse by members of the crowd or appears to become angry or distressed, supervisors should reassign that officer to a position further away from direct interaction with demonstrators. All officers and supervisors need to take care of each other to help identify and defuse situations in which high emotions may interfere with sound judgment.

10 Expressly prohibit the use of vigilantes, armed groups, or anyone who is not a police officer for crowd management. While it is appropriate to ask leaders of demonstrations or counter-demonstrations to encourage their supporters to remain calm and nonviolent (see Recommendation 2, above), police should not enlist non-police individuals or counter-demonstrators to assist police in keeping order at a demonstration.

Heavily armed members of far-right armed groups (self-styled “militias”) have recently appeared at demonstrations in a number of U.S. cities and towns, purporting to “keep order” or “protect property” at Black Lives Matter demonstrations. Most LEAs strongly prefer that armed persons stay away from demonstrations because of the risk of conflict and escalation. Nonetheless, some have encouraged armed counter-demonstrators to participate in crowd management. A few departments have recruited far-right armed groups to keep order at demonstrations, where they have been observed using force upon demonstrators, pointing guns at them, helping police to handcuff them, and even shooting demonstrators. One armed far-right counter-demonstrator said on video that local police had told his armed group that they would “push [BLM demonstrators] down by you so you can deal with them, and then we’re gonna leave.” In another jurisdiction, local police enlisted a local group of mixed martial-arts fighters and a far-right armed group to assist with “patrolling these [BLM] demonstrations.” A member of another far-right armed group said his group had “worked with police for many years now.”

The use of untrained, unsworn, armed civilians for crowd control elevates the risk of conflict, escalation, and violence. In June 2020, for example, in a jurisdiction where far-right armed groups had been enlisted to help with crowd control, a member of a far-right armed group confronted a group of demonstrators, assaulted two women, and shot one demonstrator. In August 2020, in a jurisdiction where police appeared to have treated far-right groups as partners in crowd control, a member of an armed far-right group shot three demonstrators, killing two. Counter-demonstrators and non-government armed groups should never be invited to participate in crowd management.
Do not arrest demonstrators unless reasonable and probable grounds exist to charge them with serious criminal offenses. Mass arrests should not be used for crowd management. The IACP recommends that, “wherever possible, mass arrests should be avoided.”

During recent demonstrations, police in cities such as Dallas and New York arrested hundreds of demonstrators while charging only a handful of them with serious felonies.

The mass arrest of demonstrators for whom no probable cause exists to charge a serious criminal offense tends to undermine community trust. Additionally, recent examples of mass arrests during the COVID-19 pandemic—which expose demonstrators and officers alike to virus transmission—underscore the need for a comprehensive and detailed crowd control policy to guide officers toward alternative responses.
Constrain use of force

13 **Specify the conditions in which a crowd may and may not be ordered to disperse.** The IACP recommends that, when crowd dispersal is being considered, the Incident Commander should “consider lesser alternatives,” such as continued dialogue with demonstration leaders, de-escalation, and targeting and arresting specific individuals who engage in or incite violence. A crowd should not be ordered to disperse unless the crowd presents an immediate risk to public safety, or widespread violence or property destruction appears imminent.

14 **In accordance with best practices recommended by the IACP,** require the following actions when ordering a crowd to disperse:

A. The Incident Commander or their designee should give an order to disperse before force is used to disperse a crowd;

B. The order must specify the offenses or violations being committed that justify the order to disperse;

C. The order must specify an avenue of egress—or exit—that demonstrators can use to disperse, and offer directions to get to it (e.g., “Go west on 14th Street and south on Park”);

D. The avenue of egress must be made accessible to demonstrators who seek to disperse;

E. The Incident Commander or their designee should take steps, such as posting officers at the back and on the edges of the crowd, to ensure that the order to disperse is audible throughout the crowd;

F. Where a significant proportion of persons in the crowd are believed not to understand English fluently, the order to disperse and directions for exit should be issued in languages understood by people in the crowd, as well as in English;

G. The order to disperse should be repeated two or three times, at reasonable intervals, meeting the conditions above; and

H. Before any force is used to disperse a crowd, members of the crowd must be given a reasonable opportunity to comply with the order to disperse.

These weapons cannot be used in a way that reliably distinguishes between individuals engaged in violence and nonviolent demonstrators, observers, and journalists within a crowd, and they can also affect bystanders who are attempting to pass the demonstration and people who happen to live nearby. Moreover, the use of nonlethal weapons can still cause life-threatening injuries, both as a result of impact by projectiles or canisters and as a result of the respiratory damage caused by chemical agents.
Furthermore, a recent federal court decision held that the use of “indiscriminate” weapons (that is, chemical irritants or projectiles) rather than targeted arrest or use of force upon individual lawbreakers may be interpreted as evidence of a First Amendment violation: Generalized use of force can create the impression that police use of force is unconstitutionally motivated by the demonstrators’ expression of their political views, rather than to address dangerous or unlawful behavior by individuals within (or near) the crowd.\(^44\) Moreover, the use of indiscriminate weapons against journalists or peaceful demonstrators may violate Fourth Amendment protections against excessive use of force.\(^45\)

The use of tear gas and OC spray can cause long-term respiratory damage to all people who are exposed to it, including demonstrators, police officers, medics, emergency response personnel, bystanders, and nearby residents.\(^46\) Chemical irritants can also exacerbate the COVID-19 pandemic because they “expose more people to the virus, compromise the body’s ability to fight off the infection, and even cause mild infections to become severe illnesses.”\(^47\) Medical research has established that exposure to tear gas can cause acute lung injury, chronic bronchitis, compromised lung function, and a greatly increased likelihood of developing respiratory illnesses such as influenza, pneumonia, or bronchitis, conditions often caused by viral infections.\(^48\) The American Thoracic Society notes that the use of chemical irritants exacerbates the vulnerability of demonstrators, officers, bystanders, and medics to COVID-19, not only because of lung damage but also because these irritants induce coughing, remove the ability of exposed persons to socially distance, and forces them to remove their masks because of chemical contamination.\(^19\) As a result, both the American Thoracic Society and a group of 1,288 infectious disease specialists have recommended that chemical irritants not be used for crowd control.\(^50\)

In response to all these concerns, the use of such weapons has been banned or severely restricted in several cities, including Dallas, Seattle, Portland (OR), Denver, and the states of Oregon and Colorado.\(^51\) We recommend that crowd management policies adopt the following rules, agreed to by the City of Dallas and implemented in a June 2020 consent decree:\(^52\)

**A** Prohibit the firing or deployment of kinetic impact projectiles into a crowd for any purpose;

**B** Prohibit the use of less lethal weapons such as tear gas, OC spray, pepper balls, smoke bombs, flashbangs, or any other chemical irritant

i to control peaceful crowds; and

ii against any demonstrator, bystander, civilian, resident, observer, or member of the press who does not pose any immediate threat of serious harm to anyone.

16 **Prohibit any practice in which demonstrators are boxed in or guided to an area from which all avenues of egress are blocked (sometimes referred to as “kettling”).** The IACP recommends that “officers should ensure that a means of egress is available to individuals at all times.”\(^53\) Nonetheless, kettling was reportedly used by police in response to recent demonstrations against racism and police brutality in cities across the United States.\(^54\) The practice of encircling demonstrators with no avenue of egress makes it difficult or impossible for officers to differentiate members of the crowd who may be engaged in violence or property damage from those who are not. It prevents all demonstrators from complying with an order to disperse and exposes all of them to arrest or use of force, regardless of individual culpability.
17 Ensure that the Incident Commander assigns a supervising officer, at the rank of lieutenant (or equivalent) or higher, to the Incident Command post to review and respond to serious use-of-force incidents in real time. The IACP recommends that an officer who is trained and authorized to investigate use-of-force incidents should be assigned to coordinate, record, and respond to use-of-force incidents and complaints that arise during the course of the crowd management event. This use-of-force review officer should “be prepared to deploy quickly to a serious use-of-force incident and should complete a comprehensive use-of-force after-action report.”

18 Mandate medical assistance

Make clear, explicit, and mandatory the obligation to provide and call for medical assistance for persons injured at demonstrations (whether they are injured by officers’ use of force or otherwise). A number of recent news accounts document incidents in which police officers seem to have failed to provide or request medical assistance for persons who appeared to need it, in circumstances where no obvious impediment appeared to prevent their doing so. In light of such incidents, CPE recommends that all departments ensure that their policies and procedures provide as follows:

A The obligation to provide and call for medical aid is mandatory and should not be diluted by use of discretionary phrases such as “if feasible”. Instead, the policy should mandate that officers provide or request such assistance “unless, in the circumstances, providing or requesting such assistance would be dangerous or impossible”;

B After calling for assistance, officers should be required to provide medical aid within the scope of their training, unless aid is declined or, in the circumstances, providing aid would be dangerous or impossible;

C Crowd management preparations should include staging medical services, such as ambulance and paramedics, nearby, with unimpeded access to demonstrators;

D Where a demonstrator appears to be injured but officers do not provide or call for medical aid, any circumstances that prevent the provision or request for such aid must be recorded in the use-of-force report; and

E Officers who fail to provide or request medical aid for persons who appear to be or say they are injured (whether by police use of force or otherwise) should be subject to disciplinary sanctions.

THE OBLIGATION TO PROVIDE AND CALL FOR MEDICAL AID MUST BE MANDATORY
Permit observation and recording of police and demonstrations

Permit journalists, legal observers, and laypersons to observe and record officers’ behavior during demonstrations, as well as at other times. Individuals have a First Amendment right to record or photograph police in the execution of their duties. Nonetheless, many reporters covering the recent demonstrations have been arrested and/or injured by police even after showing their press credentials and identifying themselves as journalists. In testimony before the New York State Attorney General, New York City Police Commissioner Dermot Shea testified that “members of the public are allowed to record police interactions up until they ‘cross a line,’ whereby their filming constitutes obstruction of government administration and that NYPD’s evaluation of when a person crosses that line is subjective.” The Attorney General observed that an objective standard would be necessary to provide adequate notice to the public (that is, people cannot know when they are or are not allowed to record police interactions if that judgment rests solely on the subjective discretion of the police officers being recorded).

Departmental policy should acknowledge the First Amendment right of reporters, observers, and bystanders to record police activity, and should affirm the obligation of police officers to respect that right. For example, the public recording policy of the New Orleans Police Department affirms that “the First Amendment protects a significant amount of verbal criticism and challenge directed at police officers.” The analogous policy for the Metropolitan Police Department of the District of Columbia rightly notes that “photography, including video recording, of places, buildings, structures, and events are common and lawful activities.” The New Orleans Police Department further commands that “Officers should assume that they are being observed or recorded at all times while on duty in a public place.”

Observers do not, of course, have a right to enter a crime scene or other place that is closed to the public. If an observer is positioned in a way that prevents or hinders police officers from performing their duties, or is inside an area that is closed to members of the public, they can be asked to relocate. They must not be asked to stop recording.
Coordinate joint action and training for mutual aid

**Ensure that every multijurisdictional agreement or mutual aid plan includes an agreement by all LEAs to abide by constitutional rules, state and local laws, and departmental policies of the jurisdiction where a crowd management event takes place.** Large crowd management events may exceed the resources or capacities of local police departments alone. The IACP recommends that LEAs enter multijurisdictional agreements for crowd management response that set out individual agency responsibilities, cost reimbursement, and mobilization plans. It recommends that “joint periodic training must be undertaken to ensure collective understanding of policies, procedures, and rules that must be followed by all officers during crowd management and control operations. In cases where mutual aid is activated, the IACP recommends that incoming personnel be instructed that they are under the command of the requesting agency and are required to follow its policies and direction.”

Thus, for example, a Colorado federal court judge recently ordered that “Non-Denver officers shall not use any demonstration of force or weapon beyond what Denver itself authorizes for its own officers. Any non-Denver officer permitted to or directed to be deployed to the demonstrations shall be considered an agent of Denver such that Denver shall ensure each officer is limiting their force to that authorized by [the City of Denver].”

Reliance on external agencies without unified, coordinated control can lead to unauthorized actions that may be misattributed to local law enforcement. When calling upon the support of other law enforcement or emergency response agencies, LEAs must ensure that cooperating agencies, at a minimum, comply with the use-of-force and crowd management policies of the local law enforcement agency.

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**ENSURE THAT COOPERATING AGENCIES COMPLY WITH THE USE-OF-FORCE AND CROWD MANAGEMENT POLICIES OF THE LOCAL LAW ENFORCEMENT AGENCY**

Ensure officer accountability

**Amend policy manuals to require that badges, nameplates, and other personal and agency identifiers be made visible at all times on the outside of each officer’s helmet or uniform, and that every officer provide their surname, badge number, rank, and law enforcement agency verbally upon request.** Most state and local law enforcement agency policy manuals require that officers wear a name tag and/or badge on the outside of their clothing while in uniform. Nonetheless, the practice of removing badges and name tags, or covering up identifying information, appears to be widespread. Although a few police chiefs have recently appeared to endorse such actions, most police departments acknowledge that covering badges or name tags is not permissible.
We recommend:

A Policy manuals should clearly state that the requirement to wear a badge or name tag on the outer layer of clothing is mandatory while in uniform, including when wearing civil disturbance clothing or gear;

B All badges or name tags issued by police departments should include the name of the law enforcement agency as well as the name or identifying number of the individual officer;

C The policy should specifically forbid officers to alter or obscure any identifying information on the badge or name tag;

D If a department chooses to allow officers to wear mourning bands, the dimensions, material, and placement of the band must be specified, and must forbid placing the band so as to obscure any information on the badge or name tag; and

E Any officer who intentionally removes or fails to wear a badge or name tag while in uniform, or who intentionally alters or obscures the identifying information on a badge or name tag, should be subject to disciplinary sanctions

ALL PEOPLE WHO ARE BEING ARRESTED MUST BE ABLE TO SEE AND KNOW, AS THEY ARE BEING ARRESTED, THAT THE INDIVIDUALS DETAINING THEM ARE POLICE OFFICERS

Ensure that when a person is arrested at a crowd management event, the arresting officer is in uniform, if possible. Require that any plainclothes officer who is involved in an arrest must a) show the arrestee an official badge that identifies the arresting officer as a police officer and identifies their LEA and badge number, and b) immediately request the attendance of a uniformed officer. In June 2020, armed men in combat fatigues who were sent by the federal government to respond to crowd management events in Portland, Oregon, and the District of Columbia were frequently reported to be wearing no individual or agency identification whatsoever. This has resulted in their being mistaken by some members of the public for U.S. military personnel. Similarly, in July 2020, NYPD officers in plain clothes lifted a demonstrator and pulled her into an unmarked minivan. Demonstrators and other people who interact with unidentified law enforcement officers have no way to know whom they are interacting with, which agency directs them, or indeed whether they are law enforcement officers at all. Attendance by a uniformed officer promotes transparency by showing both the individual and any witnesses to the arrest that the person making the arrest is a member of law enforcement.

In addition to knowing the charges against them, all people who are being arrested must be able to see and know, as they are being arrested, that the individuals detaining them are police officers.
23 Ensure that anyone assigned to crowd management duty is a sworn police officer who has received training in crowd management and de-escalation. Unidentified persons, untrained persons, and persons who are not sworn police officers should not be deployed for this purpose. All police officers from local and state LEAs are sworn to protect the U.S. Constitution, and most of them have received training in crowd control and de-escalation techniques. On a number of occasions, as discussed above (at Recommendation 10), armed groups of avowed white supremacists and other far-right armed persons have confronted demonstrators, purportedly to protect lives or property, and have been allowed by police to use force on demonstrators and assist with arrests.76 Also, in July 2020, federal agents deployed to keep order in Washington, DC, and in Portland, OR, had received no training in crowd management.77 While some were federal law enforcement officers, others were non-police-officers hired on contract by the Department of Homeland Security.78 The use of armed persons untrained in de-escalation or crowd management heightens the risk of escalation and violence. As recommended above (Recommendation 10), persons who are not police officers should never be assigned to crowd management duties; neither should law enforcement officers who have not been trained in crowd management.

24 Ensure that officers comply with judicial decisions, municipal bylaws, state and federal laws, and directives from municipal governments and police chiefs with respect to methods of crowd control. Several cities have seen continued use of tear gas for crowd control in circumstances in which its use was prohibited by municipal or state law.79 Officers who use force in ways that are prohibited by law, policy, or directive of the mayor or police chief should be subject to disciplinary sanctions.

OFFICERS MUST RECEIVE TRAINING IN CROWD MANAGEMENT AND DE-ESCALATION

Protect officer and public health

25 Consult with public health departments, civil liberties organizations, and community groups to identify best practices for infectious disease control in police activities.80 Officers who follow public health guidelines for social distancing, masking, and PPE (personal protective equipment)—whether among themselves, between themselves and the public, or among persons with whom they interact—will maximize community health and safety, community trust, and the health and safety of law enforcement officers.81 Consultation with public health authorities can clarify practices that can mitigate transmission of infectious disease, while community and civil rights groups can ensure that policing practices around infectious disease mitigation continue to safeguard the health and rights of community members as well as police.
Where departmental rules or state, local, or federal laws impose social distancing requirements or require that masks be worn, ensure that police officers (and non-police civilian employees) comply with them. To protect citizens and prevent the transmission of COVID-19, many states, cities, and police departments have imposed rules that require people, including police officers, to wear masks indoors, outdoors, or where social distancing is not possible. Nonetheless, on multiple occasions, police officers from many jurisdictions have been observed maskless while on duty at demonstrations, despite a legal or departmental requirement that they wear masks. Disciplinary consequences for officers who flout mask laws appear to have been infrequent. For the safety of officers and those they interact with, departmental policies should be amended to incorporate mandates, such as those imposed by LAPD and the Los Angeles Sheriff’s Department, that officers wear masks at all times while on duty except where doing so could jeopardize the officer’s safety. Willful failure to comply with departmental, legal, or public health requirements should be a disciplinary offense.
If a detained person (whether masked or unmasked) reports any breathing difficulty, officers must adjust the person’s body position or mask as required to allow them to breathe unobstructed. A detained person whose breathing difficulty is not immediately relieved by these actions should receive immediate medical assistance (see Recommendation 18, above).

Officers or staffers may require detained persons to remove masks only for the purpose of identification or as necessary to conduct a lawful search.

Persons who are detained in a police station or other lockup must be allowed to wear masks.

Whenever possible, arrested persons who do not live in the same household should be transported in separate vehicles.

When possible and safe in the circumstances, vehicle windows should be opened during transportation to allow free air flow through the vehicle.

All applicable social distancing requirements imposed by local, state, or federal law must be observed in detention facilities operated by law enforcement agencies. To protect staffers and other detained persons, detained individuals should be required to wear masks (unless doing so would be unsafe for them).

In order to avoid the overcrowding that can facilitate virus transmission to detained persons and staff, mass arrests and discretionary arrests for minor or nonviolent offenses should be avoided. (See also Recommendation 12, above.)

We encourage LEAs to align with these best practices to ensure the constitutional rights of demonstrators in a way that ensures public safety and enhances public trust. We urge LEAs to partner with communities to define and implement effective crowd management strategies.
In One Week There Were At Least 9…

level… testified that NYPD's response to the demonstrators was emblematic of the very reasons people were protesting to begin with: police were overly aggressive, flashbangs on peaceful demonstrators without any audible order to disperse); "Representatives from nearly 20 community-based organizations on the local and national… (hereinafter "NYSAG") (criticizing excessive force, failure to de-escalate, and inadequate concern for civil liberties in NYPD’s crowd management at demonstrations, and making recommendations for reform). Sheila Dewan & Mike Baker, Facing Protests Over Use of Force, Police Respond With More Force, New York Times (June 2, 2020), https://www.nytimes.com/2020/05/31/us/police-tactics-floyd-protests.html.


3 IACP, above note 2, at p.6.


5 Language adapted from Metropolitan Police Department (District of Columbia), First Amendment Assemblies and Mass Demonstrations, https://go.mpdconline.com/GO/SOP_16_01.pdf § 5-331.02, “Definitions.”


8 Id., at p.3.

9 Task Force on 21st Century Policing, above note 6, at p. 25.

10 Id., at p. 25.

11 IACP, above note 2, at p.3.


15 Task Force on 21st Century Policing, above note 6, at p.25.

16 Colin Boyle (@colinphoto), Twitter (June 4, 2020, 7:03 p.m.), https://twitter.com/colinphoto/status/1268697675979244032 (sharing image of Chicago police officer giving two middle fingers to demonstrators. The officer shown in this photo was subsequently “relieved of his police powers” for “conduct unbecoming”. NBCS Chicago, Officer Who Flipped Off Protesters Relieved of Powers (June 2, 2020), https://www.nbcchicago.com/news/local/chicago-police-officer-who-flipped-off-protesters-relieved-of-powers/2287340/.


18 See, e.g., Hannah Colon, Armed Civilian Groups Patrol ABQ Protests, Raising Questions of Coordination with Police, KUNM (June 8, 2020), https://www.kunm.org/post/armed-civilian-groups-patrol-abq-protests-raising-questions-coordination-police (hereinafter “Colon, Armed Civilian Groups”) (reporting that Albuquerque, NM, police have dealt with a small but vocal array of right-wing extremists appearing at protests (documents attending by armed far-right groups to demonstrations against police brutality throughout the United States), Kate Irby, Cops Want Self-Proclaimed Militia to Stay Away From Protests. But There’s Not Much They Can Do, Sacramento Bee (June 11, 2020), https://www.sacbee.com/news/local/article24340036.html (noting that many California LEAs do not want armed far-right groups to attend demonstrations, but feel unable to stop them).

19 IACP, above note 2, at p.6.

20 See notes 21-30, below, and accompanying text.

consequences of severe injury, disability and death, [kinetic impact projectiles] do not appear to be appropriate weapons for use in crowd-control settings”.


24. In 2017, DHS invited members of a far-right armed group to keep order at an “alt-right rally” in Portland, OR, where far-right armed group members were recorded tackling counter-demonstrators, kneel on them, and helping police to handcuff them: Gupta, above note 23, more recently, in Albuquerque, NM, police dispatchers were overheard describing “heavy armed friendly” aiming guns at anti-racism demonstrators from rooftops: Colton, Armed Civilian Groups, above note 19, Rogan, id.


27. Rogan, above notes 23-25; Stahl, above note 23.

28. Id., at p.5.


30. IACP, above note 2, at p.6. It points out, “When lines of communication have been maintained between organization leaders or organizers and a law enforcement liaison, it is sometimes possible to negotiate a resolution to the situation. Given such situations, many crowds tend to become self-enforcing to ensure that they can continue to assemble and convey their message.”

31. Id., at p.5.

32. BLM v. Seattle, above note 1, at p.9–20. 21 (NYPD arrested an average of 190 demonstrators per day during the first week of demonstrations after the killing of George Floyd, a large majority of whom were either charged with no criminal offense, or were charged with a misdemeanor).

33. IACP, above note 2, at p.8.

34. See generally International Association of Chiefs of Police, Model Policy: Crowd Management (updated April 2019), s.IVF, https://www.theiacp.org/sites/default/

35. Ibid., at p.20.


37. See generally Abay v. City of Denver, ibid.

38. IACP, above note 2, at p.6.


40. See generally Liz Szabo et al., Fractured Skulls, Lost Eyes: Police Break Their Own Rules When Shooting Protesters with “Rubber Bullets,” USA Today (June 22, 2020), https://www.usatoday.com/in-depth/news/nation/2020/06/19/police-break-rules-shooting-protesters-rubber-bullets-less-lethal-projectiles/d211421001/ (documenting more than 60 incidents in which projectiles destroyed eyes, caused brain injury, or broke multiple bones in the faces of people hit by “less-lethal” munitions); Donovan Slack et al., Police Use of Rubber Bullets, Bean Bag Rounds Has Left a Bloody Trail for Decades, USA Today (July 24, 2020) (noting that the United Kingdom has banned use of less-lethal projectiles for crowd control); Jones & Raftery, above note 14 (reporting on 26-year-old woman went into cardiac arrest after being hit in the chest by a blast ball); Rohin J. Haar et al., Death, Injury and Disability from Kinetic Impact Projectiles in Crowd-Control Settings: A Systematic Review. 7 BMJ Open  (2017) (finding 53 documented deaths from use of less-lethal munitions for crowd control and concluding that “Given their inherent inaccuracy, potential for misuse and associated health consequences of severe injury, disability and death, [kinetic impact projectiles] do not appear to be appropriate weapons for use in crowd-control settings”).


42. For example, in BLM v. Seattle, the district court judge observed at p.7, “The use of indiscriminate weapons against all protesters—not just the violent ones—supports the inference that SPD’s actions were substantially motivated by Plaintiffs’ First Amendment activity.”

43. E.g., BLM v. Seattle, at p.8.


46. Hout, above note 40; American Thoracic Society, above note 40.

47. Open letter from 1,288 infectious disease specialists, https://drive.google.com/file/d/1Jyfn4Wd2i6bRl2ePghMHtX3y1b7KIA/view; American Thoracic Society, ibid.

48. American Thoracic Society, ibid; Open letter from 1,288 infectious disease specialists, ibid.
See, e.g., Williams v. City of Dallas, above note 38 (conceal decree prohibits “firing or deploying kinetic impact projectiles into a crowd for any purpose” and prohibits the use of “less lethal weapons such as tear gas, smoke bombs, flashbangs, pepperball, mace, and other chemical agents in conjunction with protests” to control “peaceful crowds” or against “protestors, bystanders, civilians, or members of the press, who are not posing any immediate threat of serious harm to anyone,” for 90 days). Nicole Chavez, Portland is the Latest City to Suspend the Use of Tear Gas or Protesters, CNN.com (June 6, 2020), https://www.cnn.com/2020/06/06/us/portland-peaceful-protests/index.html (noting that Denver and Seattle had banned chemical weapons for crowd control, and Portland had banned tear gas). Tess Riski, Oregon Legislature Passes Package of Police Reform Bills as Special Session Ends, Willamette Week (June 26, 2020) https://www.wwek.com/news/ state/2020/06/26/oregon-legislature-passes-package-of-police-reform-bills-as-special-session-ends/ (reporting on passage of Oregon HB 4208, restricting circumstances in which tear gas may be used for crowd control); Abay v. City of Denver, above note 1 at p.10 (restricting the use of projectiles and chemical irritants); Colorado SB 21-17 (prohibiting the “indiscriminate” discharge of projectiles into a crowd; prohibiting the discharge of projectiles in a way that targets the pelvis, head, or back; and requiring that, before chemical irritants are released, orders to disperse be made, audible, be repeatable necessary, and that the crowd be given a chance to comply); BLM v. Seattle, above note 1 at p.11 (prohibiting SPD from “employing chemical irritants or projectiles of any kind against persons peacefully engaging in protests or demonstrations,” prohibiting their “indiscriminate use,” requiring that such means of crowd control be “targeted,” and restricting the use of tear gas to circumstances in which other means to subdue an “imminent threat of physical harm to [officers] or identifiable others or to respond to specific acts of violence or destruction of property” have been exhausted, and the police chief has determined that the use of tear gas is “the only reasonable alternative available”); Mike Carter, City Agrees to Extend Ban on Using Force Against Peaceful Protesters Through September 30, Seattle Times (June 18, 2020), https://www.seattletimes.com/seattle-news/city-agrees-to-exend-ban-on-using-force-against-peaceful-protesters-through-sept-30/ (reporting that federal court judge had extended BLM v. Seattle injunction to Sept. 30, 2020).

62 Williams v. City of Dallas, ibid.

63 IACP, above note 2, at p.9.


65 IACP, above note 2, at p.9.

66 See, e.g., NYSAG, above note 1, at p.43 (recommending that New York state use-of-force law be amended to explicitly require officers to request or provide medical treatment where necessary).

67 See, e.g., Mike Desmond & Omer Fetouh, Graphic Video: Two Buffalo Police Officers Suspected After Elderly Man Shoved and Injured (video shows officers pushing 75-year-old man backward, so his head hits the ground with an audible thump and blood pools around his head; several officers are shown watching without offering any assistance); Jones & Raftery, above note 14 (26-year-old woman was hit in the chest by a blast ball, resulting in her immediate collapse and cardiac arrest; the critically injured woman was assisted by demonstrators and street medics, but says she was not helped by SPD officers); Halie Goldfarb, Outsage at Showing Child Who Was Maced by Police at Seattle Protest, The Guardian (June 15, 2020), https://www.theguardian.com/us-news/2020/jun/15/outrage-video-police-mace-child-seattle-protest (showing a seven-year-old child screaming in pain after having been hit in the face with OC spray. As demonstrators pour milk over the child’s face, they shout at officers asking why they sprayed the child in the face and made no attempt to help); Elise Takahama, Seattle Police Crowd-Control Tactics Come Under Fire by People Injured in Protests, Seattle Times (June 22, 2020), https://www.seattletimes.com/seattle-news/Seattle-People-crowd-control-tactics-come-under-fire-by-people-injured-in-protests-Seattle-police-badges-(a-spy)-or-rubber-tube-a-woman-a-her-friend-try-to-escape-through-a-line-of-police-barricades-to-get-to-the-friends-car-so-that-the-friend-could-drive-her-to-hospital/, Jordan Pedneault, Police Targeting “Street Medics” at US Protests, Human Rights Watch (June 17, 2020), https://www.hrw.org/news/2020/06/17/police-targeting-street-medics-us-protests-(reporting on police chief's statement that, after a demonstrator was hit in the head by a projectile, knocking him unconscious, and causing profuse bleeding, Austin police directed other demonstrators to carry him to a nearby police headquarters to receive medical assistance. The police were attempting to bring him to the headquarters, “at least 14 times,” injuring one of the medics and delaying medical assistance for the unconscious man); NYSAG, above note 1, at p.29 (New York state senator testified that he was pepper sprayed by police and temporarily detained without receiving medical attention for his injuries).


69 See, e.g., Jason Hanna & Amir Vera, CNN Crew Released from Police Custody After They Were Arrested Live on Air in Minneapolis, CNN.com (May 29, 2020), https://www.cnn.com/2020/05/29/us/minneapolis-cnn-crew-arrested/index.html; Brian Stelter, Journalists Covering Protests Face Assault and Arrest, CNN.com (May 31, 2020), https://www.cnn.com/2020/05/30/politics/journalists-arrested-assaulted/index.html (documenting arrests of journalists in Minneapolis, Washington, DC, Louisville, and Las Vegas), Paul Farhi & Elaine Izadi, “The Norms Have Broken Down”: Shock As Journalists Are Arrested, Injured by Police While Trying to Cover the Story, Washington Post (May 30, 2020), https://www.washingtonpost.com/lifestyle/media/journalists-at-several-protests-were-injured-arrested-by-police-while-trying-to-cover-the-story/2020/05/31/iblc32aa-a342-1eaa-b619-3f133bab482_story.html; NYSAG, above note 1, at p.17 (nine legal observers from National Lawyers Guild (NLG) “were wrongfully arrested during the Bronx protest despite showing documentation that they were exempt from the Mayor’s curfew order. According to NLG, officers told the legals they were going to release them only on the condition that they leave the area immediately and stop documenting police misconduct. The legal observers refused this demand and ultimately were released. However, they were forced to stand a block away from the police activity they sought to observe.”).

70 NYSAG, above note 1, at p.32. However, the NYPD Patrol Guide, at p.159 Procedure No. 203-29 (https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/public-pgid-e1.pdf), restricts the circumstances in which person can be stopped from recording.

71 Ibid.


75 IACP, above note 2, at p.3.

76 Abay v. City of Denver, above note 1, at p.10.

77 For example, in Minneapolis during the demonstrators against the killing of George Floyd, the Minnesota State Police slashed the tires of demonstrators and arrested CNN reporter Omar Jimenez and three colleagues while they were reporting on air: Hanna & Vera, above note 56.

78 See Seattle C.B. 119803, amending Seattle Municipal Code, ss. 3.28.130, Preamble (noting reports that officers on duty at demonstrations had covered their badge numbers); NYSAG, above note 1, at p.29 (noting that “When worn properly, [marching bands] do not obstruct view of an officer's identifying information,” but witnesses testified that the badges were worn to cover that information); Jonathan Ballev, CPD Investigating At Least One Officer Who Covered Up Badge During Protest, Chicago Sun-Times (June 4, 2020), https://chicago.suntimes.com/2020/6/4/21280939/chicago-police-department-investigating-at-least-one-officer-who-covered-up-badge-during-protest (noting reports of officers covering nametags or badges, or removing them entirely).
30 Maxine Bernstein, Portland Police Allowed to Cover Name Tags With Personnel Number During Protests, At Former Chief’s Direction, The Oregonian (June 17, 2020) https://www.oregonlive.com/portland/2020/06/portland-police-allowed-to-cover-name-tags-with-personnel-number-during-protests-at-former-chiefs-direction.html (reporting that then-Chief Jami Resch “told officers they could cover their name tags on their outer uniforms with tape that instead shows their city personnel number while working on the street during protests in the wake of the death of Minneapolis resident George Floyd”); Derryl Shes @NYPDShea, Twitter (April 16, 2020, 5:11 p.m.), https://twitter.com/NYPDShea/status/1250985456982059938 (posting photograph of a NYPD badge with the identifying information entirely covered by a black band, accompanied by the text: “New Yorkers may begin to see our officers with black mourning bands across their shields—and across their hearts. We wear these in quiet commemoration of our 27 brothers and sisters we’ve lost to COVID. Another way we honor our vow to #NeverForget.”). Permalink: https://tinyurl.com/ygtdgu28b.

31 See, e.g., Balawe, above note 69, City of Seattle, Changes to Mourning Band Policy Coming to Department, SPD Blotter (June 4, 2020), https://spdblotter.seattle.gov/2020/06/04/changes-to-mourning-band-policy-coming-to-department/ (Police Chief Carmen Best orders “Effective immediately, all officers will have their badge numbers prominently displayed: …[A] mourning band … must be placed horizontally so that your badge number is not obscured.”); Jonathan Ballwe, Chicago Police Investigating 78 Complaints of Officers Removing or Covering Their Badges During Protests, Chicago Sun-Times (June 11, 2020), https://www.chicagoreporter.com/chicago-police-investigating-78-complaints-of-officers-removing-or-covering-badges-during-protests/.


33 Defense Secretary Mark Esper has expressed concern that armed men sent by DHS to keep order in Portland were mistaken for members of the United States military, and he said he “wants] a system where people can tell the difference.” Lara Seligman, Esper Concerned over Federal Law Enforcement in their City/2020/07/17/ae5dbf18-c871-11ea-8ffe-372be8d82298_story.html. “Absent identifying signs of actual authority the rows of federal officers appear all-but indistin-

34 “Pettibone [who was detained and later released by unidentified federal agents in Portland] said he did not know whether the men were police or far-right extremists, who frequently don military-like outfits and harass left-leaning protesters in Portland.” Emily Gillespie et al., Portland Officials Decry Aggressive Tactics of Federal Agents in Their City, Washington Post (July 18, 2020), https://www.washingtonpost.com/national-security/portland-officials-decry-aggressive-tactics-of-federal-agents-in-their-city/2020/07/18/1f16a32b-022e-494e-8e7f-0066b1892883_story.html (reporting that “Pettibone said he was ‘flipped off’ by federal agents who would not give him their name or badge numbers who, when asked, said only that they were ‘with the Department of Justice’”); Jonathan Levinson, Federal Law Enforcement Use Unmarked Vehicles to Grab Protesters Off Portland Streets, https://www.opb.org/news/article/federal-law-enforcement-unmarked-vehicles-portland-protesters/; in Kansas City, MO, the U.S. Attor-

35 “…In a letter released Thursday, Wolf said, ‘Portland has been under siege for 47 straight days by a violent mob while local political leaders refuse to restore order to protect their city.’” Levinson & Wilson, above note 69. Zolan Kneen-Youngs & Katie Benner, Trump Deployed Full Might of Federal Law Enforcement to Crush Protests, New York Times (June 12, 2020), https://www.nytimes.com/2020/06/02/politics/trump-law-enforcement-protests.html; Bill Conroy, The Lead Federal Agency Responding to Protesters in Portland Employs Thousands of Federal Contractors, Medium (July 22, 2020) https://medium.com/ivwkc428/the-lead-federal-agency-responding-to-protesters-in-portland-employs-thousands-of-private-dbi77349f830 (noting that the Federal Protective Service that is co-ordinating the crowd control effort in Portland “is composed largely of contract security personnel” who are inadequately vetted and untrained in de-escalation or crowd control).


37 See generally 18 U.S.C. § 242, USDA Justice, Law Enforcement Misdemean [updated July 6, 2020] (noting that law enforcement officers who fail to take reasonable measures to abate a known, substantial risk of harm to persons in their custody may violate detainees’ civil rights).

38 Police officers and other emergency responders are at high risk of contracting and transmitting SARS-CoV-2. As of May 20, 2020, 5,691 of NYPD’s 36,000 officers had tested positive for the coronavirus. NYPD News (@NYPD News), Twitter (May 20, 2020, 6:38 p.m.), https://twitter.com/NYPDnews/status/125089456982059938 (posting photograph of a NYPD badge with the identifying information entirely covered by a black band, accompanied by the text: “New Yorkers may begin to see our officers with black mourning bands across their shields—and across their hearts. We wear these in quiet commemoration of our 27 brothers and sisters we’ve lost to COVID. Another way we honor our vow to #NeverForget.”). Permalink: https://tinyurl.com/ydggu28b.

39 For example, in New York, “witnesses testified that large numbers of NYPD officers failed to wear face masks or other forms of PPE during the protests.” NYSAG, above note 1, at p. 29. On multiple occasions, Washington, DC, police officers have been reported to have been maskless while “monitoring protests, getting into conflicts with protesters, or making arrests during the demonstrations that have been taking place since May.” Matthew Butaney, DC Branch of ACLU Wants Face Masks to Be Mandatory for DC Police, WTOP News (July 10, 2020), https://wtop.com/dc/2020/07/dc-branch-of-aciwants-face-masks-to-be-mandatory-for-district-police/, Emily Elena Dugdale, They Got the Memes, But LA Cops Still Aren’t Wearing Masks, LAist (July 6, 2020), https://lait.com/2020/07/06/they_got_the_memos_but_l-a_cops_still_arent_wearing_masks.php; KPPC, Los Angeles Police Officers Seen Not Wearing Masks (July 3, 2020), https://www.facebook.com/kppc/videos/277515698425747/; Fran Spielman, Lightfoot: Fire Police Officers Who Flipped Off Protesters, Covered Nametags and Badges, Chicago Sun-Times (June 5, 2020), https://chicago.suntimes.com/ city-hall/2020/6/5/21218684/mayor-lori-lightfoot-fire-chicago-police-officers-who-flipped-off-protesters-covered-nametags-badges (Chicago mayor “said her patience is wearing thin with Chicago police officers refusing to wear masks and protective gear provided by the city,” and suggested that such officers should be disciplined).

40 For example, Commissioner Shea testified that “no (NYPD) officer had received discipline for failure to wear a mask during his or her patrol of the protests.” NYSAG, above note 1, at p. 33.

41 LAPD and LA Sheriff’s Department policies linked at Dugdale, above note 79.

42 “Many [protesters] testified that during the course of their arrests, the masks were torn off by violent protesters who flipped off officers in black masks, and when they sought assistance to adjust their masks or obtain new masks while in custody, their requests were ignored or refused.” NYSAG, above note 1, at p. 29.

43 “[W]itnesses described overcrowded cells without proper PPE or the ability to socially distance and that those detained were not provided water or food.” ibid.