



Center For  
**POLICING EQUITY**

# **GUIDING PRINCIPLES FOR CROWD MANAGEMENT**



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## ACKNOWLEDGMENTS

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We also thank Kathy O'Toole (former Chief of the Seattle Police Department), Chief Brackney (Charlottesville Police Department), and Deputy Chief Velez (Orlando Police Department) for their review and feedback, which enhanced the guidance included in this document.

# 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.<sup>1</sup>

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.



**PARTNER WITH COMMUNITIES**

## GUIDING PRINCIPLES FOR CROWD MANAGEMENT: DETAILED RECOMMENDATIONS

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.<sup>2</sup> 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.”<sup>3</sup>

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.<sup>4</sup> 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”);<sup>5</sup>
  - 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.<sup>6</sup>



## 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.”<sup>7</sup> 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”<sup>8</sup> and “undermine civilian trust,”<sup>9</sup> 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.”<sup>10</sup> 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.<sup>11</sup>

LEAs throughout the nation have been criticized for aggressive and militarized responses to demonstrations that were largely nonviolent.<sup>12</sup> The Task Force on Twenty-First Century Policing cautions that “when officers line up in a military formation while wearing full protective gear”<sup>13</sup>—as happened frequently during the recent demonstrations in Aurora, Buffalo, Louisville, New York, Seattle, and other cities<sup>14</sup>—their presence and demeanor “may have a dramatic influence on how the crowd perceives them and how the event ends.”<sup>15</sup>

### 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.

**AFFIRM DE-ESCALATION AS A CORE PRINCIPLE OF CROWD MANAGEMENT**

- 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,<sup>16</sup> making white supremacist hand gestures,<sup>17</sup> and slashing demonstrators' tires.<sup>18</sup> Other officers have been observed offering verbal support and encouragement to white supremacist counter-demonstrators<sup>19</sup> and even enlisting counter-demonstrators to assist with the law enforcement demonstration response.<sup>20</sup> Community trust is undermined when police officers appear hostile to community members and appear to attack demonstrators whose political message is critical of police.

## COUNTER-DEMONSTRATORS AND NON-GOVERNMENT ARMED GROUPS SHOULD NEVER BE INVITED TO PARTICIPATE IN CROWD MANAGEMENT

- 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.<sup>21</sup> Most LEAs strongly prefer that armed persons stay away from demonstrations because of the risk of conflict and escalation.<sup>22</sup> Nonetheless, some have encouraged armed counter-demonstrators to participate in crowd management.<sup>23</sup> A few departments have recruited far-right armed groups to keep order at demonstrations,<sup>24</sup> where they have been observed using force upon demonstrators, pointing guns at them, helping police to handcuff them, and even shooting demonstrators.<sup>25</sup> 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.”<sup>26</sup> 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.”<sup>27</sup> A member of another far-right armed group said his group had “worked with police for many years now.”<sup>28</sup>

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.<sup>29</sup> In August 2020, in a jurisdiction where police appeared to have treated far-right groups as partners in crowd control,<sup>30</sup> a member of an armed far-right group shot three demonstrators, killing two.<sup>31</sup> Counter-demonstrators and non-government armed groups should never be invited to participate in crowd management.



## DISPERSAL OF A DEMONSTRATION SHOULD BE A LAST RESORT



### 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.**<sup>32</sup> Best practices for crowd management encourage individualized responses to individual acts of violence or property damage in an otherwise peaceful crowd. The IACP recommends that individual lawbreaking “does not normally provide blanket grounds” for use of force, an order to disperse, or a declaration that an assembly is unlawful (see Recommendation 13). As stated in Recommendation 5(d), above, the primary response to individual lawbreaking should be to stop or arrest those individuals involved, while allowing the peaceful demonstration to continue. The IACP also recommends negotiation with event leaders or organizers to resolve the situation by encouraging demonstrators to engage in lawful behavior.<sup>33</sup> Dispersal of a demonstration should be a last resort.
- 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.** The IACP recommends that, “wherever possible, mass arrests should be avoided.”<sup>34</sup> 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.<sup>35</sup>

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.

- 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.<sup>36</sup> 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,<sup>37</sup> 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;<sup>38</sup>
  - 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.<sup>39</sup>



## 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.** As mentioned above, the IACP recommends that “the fact that some individuals in a crowd have engaged in unlawful conduct does not normally provide blanket grounds for use-of-force countermeasures.”<sup>40</sup> Nonetheless, the police response to recent demonstrations in cities across the United States has involved tear gas, pepper spray, and projectiles, such as rubber bullets and flashbangs.<sup>41</sup>

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<sup>42</sup> and as a result of the respiratory damage caused by chemical agents.<sup>43</sup>

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.<sup>44</sup> Moreover, the use of indiscriminate weapons against journalists or peaceful demonstrators may violate Fourth Amendment protections against excessive use of force.<sup>45</sup>

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.<sup>46</sup> Chemical irritants can also exac-

erbate 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.”<sup>47</sup> 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.<sup>48</sup> 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.<sup>49</sup> 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.<sup>50</sup>

## CHEMICAL IRRITANTS CAN EXACERBATE THE COVID-19 PANDEMIC

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.<sup>51</sup> 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:<sup>52</sup>

- 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.”<sup>53</sup> Nonetheless, kettling was reportedly used by police in response to recent demonstrations against racism and police brutality in cities across the United States.<sup>54</sup> 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.”<sup>55</sup>



## 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).**<sup>56</sup> 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.<sup>57</sup> 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

**19 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.<sup>58</sup> 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.<sup>59</sup> 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.’”<sup>60</sup> 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).<sup>61</sup>

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.”<sup>62</sup> 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.”<sup>63</sup> 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.”<sup>64</sup>

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.<sup>65</sup>





## 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.** 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.”<sup>66</sup>

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].”<sup>67</sup>

Reliance on external agencies without unified, coordinated control can lead to unauthorized actions that may be misattributed to local law enforcement.<sup>68</sup> 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.

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



## 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.** 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.<sup>69</sup> Although a few police chiefs have recently appeared to endorse such actions,<sup>70</sup> most police departments acknowledge that covering badges or name tags is not permissible.<sup>71</sup>



**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**

- 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.** 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.<sup>72</sup> This has resulted in their being mistaken by some members of the public for U.S. military personnel.<sup>73</sup> Similarly, in July 2020, NYPD officers in plain clothes lifted a demonstrator and pulled her into an unmarked minivan.<sup>74</sup> 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.<sup>75</sup> 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.<sup>76</sup> Also, in July 2020, federal agents deployed to keep order in Washington, DC, and in Portland, OR, had received no training in crowd management.<sup>77</sup> While some were federal law enforcement officers, others were non-police-officers hired on contract by the Department of Homeland Security.<sup>78</sup> 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.<sup>79</sup> 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.**<sup>80</sup> 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.<sup>81</sup> 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.



**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.** 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.<sup>82</sup> Disciplinary consequences for officers who flout mask laws appear to have been infrequent.<sup>83</sup> 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.<sup>84</sup> Willful failure to comply with departmental, legal, or public health requirements should be a disciplinary offense.

**OFFICERS WHO FOLLOW PUBLIC HEALTH GUIDELINES MAXIMIZE COMMUNITY HEALTH, COMMUNITY TRUST, AND OFFICER HEALTH AND SAFETY**

**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.**

**A Masks:**

- i Disposable masks should be provided, free of charge, to all persons arrested.
- ii Any person who is wearing a mask at the time of arrest should be permitted to keep wearing it.<sup>85</sup>
- iii Masks should not be placed on anyone who appears drowsy, intoxicated, unconscious, or who reports any breathing difficulty.
- iv 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).
- v Officers or staffers may require detained persons to remove masks only for the purpose of identification or as necessary to conduct a lawful search.
- vi Persons who are detained in a police station or other lockup must be allowed to wear masks.

**B Vehicles:**

- i Whenever possible, arrested persons who do not live in the same household should be transported in separate vehicles.
- ii When possible and safe in the circumstances, vehicle windows should be opened during transportation to allow free air flow through the vehicle.

**C Detention facilities:**

- i All applicable social distancing requirements imposed by local, state, or federal law must be observed in detention facilities operated by law enforcement agencies.<sup>86</sup>
- ii To protect staffers and other detained persons, detained individuals should be required to wear masks (unless doing so would be unsafe for them).
- iii 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.)

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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.

- <sup>1</sup> E.g., *Index Newspapers LLC v. City of Portland*, No. 3:20-cv-1035-SI (D. Ore. July 23, 2020), [https://aclu-or.org/sites/default/files/field\\_documents/aclu\\_tro\\_against\\_federal\\_defendants.pdf](https://aclu-or.org/sites/default/files/field_documents/aclu_tro_against_federal_defendants.pdf) (enjoining federal agents and Portland city police from dispersing, arresting, threatening with arrest, or targeting force upon journalists or legal observers at demonstrations); *Abay v. City of Denver*, No. 20-cv-01616-RBJ (D. Colo. June 5, 2020) (“*Abay v. City of Denver*”); *Black Lives Matter Seattle-King County v. City of Seattle*, No. 2:20-cv-00887-RAJ (W.D. Wash. June 12, 2020), <https://www.documentcloud.org/documents/6943739-SPD-Tear-Gas-Order.html> (“*BLM v. Seattle*”); *ACLU, ACLU of Washington, the Korematsu Center, and Perkins Coie File Lawsuit on Behalf of Black Lives Matter Seattle-King County to Stop the Use of Chemical Agents and Projectiles for Crowd Control* (Press release, June 9, 2020), <https://www.aclu-wa.org/news/aclu-washington-korematsu-center-and-perkins-coie-file-lawsuit-behalf-black-lives-matter>; Seattle C.B. 119805 (passed June 15, 2020), *Preamble* (itemizing incidents of force used upon peaceful demonstrators, including children); Associated Press, *Louisville PD Apologizes for Targeting News Crew at Protest*, ABC News (May 30, 2020), <https://abcnews.go.com/US/wireStory/louisville-pd-apologizes-targeting-news-crew-protest-70966742>; New York State Office of the Attorney General, *Preliminary Report on the New York City Police Department’s Response to the Demonstrations Following the Death of George Floyd* (July 2020), <https://ag.ny.gov/sites/default/files/2020-nypd-report.pdf> (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>.
- <sup>2</sup> International Association of Chiefs of Police, *Concepts and Issues Paper: Crowd Management* (updated April 2019), [https://www.theiacp.org/sites/default/files/2019-04/Crowd%20Management%20Paper%20-%202019\\_1.pdf](https://www.theiacp.org/sites/default/files/2019-04/Crowd%20Management%20Paper%20-%202019_1.pdf) (hereinafter “IACP”).
- <sup>3</sup> IACP, above note 2, at p.6.
- <sup>4</sup> See, e.g., *Novak v. City of Parma*, 932 F.3d 421, 427–28 (6th Cir. 2019); *State v. E.J.J.*, 354 P.3d 815 (Wash. 2015).
- <sup>5</sup> Language adapted from Metropolitan Police Department (District of Columbia), *First Amendment Assemblies Act of 2004, Standard Operating Procedures: Handling First Amendment Assemblies and Mass Demonstrations*, [https://go.mpdconline.com/GO/SOP\\_16\\_01.pdf](https://go.mpdconline.com/GO/SOP_16_01.pdf) § 5-331.02, “Definitions.”
- <sup>6</sup> See, e.g., Ashley Southall, *Scrutiny of Social-Distance Policing as 35 of 40 Arrested are Black*, New York Times (May 7, 2020), <https://www.nytimes.com/2020/05/07/nyregion/nypd-social-distancing-race-coronavirus.html?searchResultPosition=1> (noting that NYPD officers distributed masks to maskless White sunbathers in Central Park while issuing dispersal orders and using force to enforce social distancing in predominantly Black neighborhoods).
- <sup>7</sup> IACP, above note 2, at p.5; President’s Task Force on 21st Century Policing, *Final Report of the President’s Task Force on 21st Century Policing* at p. 25 (2015), [https://cops.usdoj.gov/pdf/taskforce/taskforce\\_finalreport.pdf](https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf) (hereinafter “Task Force on 21st Century Policing”). The Twenty-First Century Policing report offers the example of the Chicago Police Department, which, to prevent demonstrations at the 2012 NATO Summit from developing into riots, “refreshed ‘perishable’ skills, such as engaging in respectful conversations with demonstrators, avoiding confrontation, and using ‘extraction techniques’ not only on the minority of demonstrators who were behaving unlawfully (throwing rocks, etc.) but also on officers who were becoming visibly upset and at risk of losing their composure and professional demeanor.”
- <sup>8</sup> *Id.*, at p.3.
- <sup>9</sup> Task Force on 21st Century Policing, above note 6, at p.25.
- <sup>10</sup> *Id.*, at p.25.
- <sup>11</sup> IACP, above note 2, at p.3.
- <sup>12</sup> See, e.g., Rae Ellen Bichell & Matt Bloom, *Protesters Brought Violins to a Vigil For Elijah McClain. Police Brought Pepper Spray and Riot Gear*, Aspen Public Radio (July 2, 2020), <https://www.aspenpublicradio.org/post/protesters-brought-violins-vigil-elijah-mcclain-police-brought-pepper-spray-and-riot-gear>; Associated Press, above note 1 (Louisville); NBC New York, *Buffalo Police Officers Shove 75-Year-Old Protester, 57 Officers Resign After Incident*, YouTube (June 5, 2020), <https://youtu.be/up2JUCgaFY>; Brandon del Pozo, *Watch This Protest Turn from Peaceful to Violent in 60 Seconds*, New York Times (June 26, 2020), <https://www.nytimes.com/interactive/2020/06/26/opinion/blm-protests-police-violence.html?auth=login-email&login=email> (showing police in riot gear “indiscriminately” using OC spray, tear gas, and flashbans on peaceful demonstrators without any audible order to disperse); “Representatives from nearly 20 community-based organizations on the local and national 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, were outfitted in military-type gear, and did not de-escalate when tensions rose”: NYSAG, above note 1, at p.30; Dakin Andone, *In One Week There Were At Least 9 Instances of Police Using Excessive Force Caught on Camera*, CNN (June 8, 2020), <https://www.cnn.com/2020/06/06/us/police-excessive-force-us-protests/index.html>.
- <sup>13</sup> Task Force on 21st Century Policing, above note 6, at p.25.
- <sup>14</sup> E.g., Liz Jones & Isolde Raftery, *This Woman “Died Three Times” After Seattle Police Hit Her with a Blast Ball*, KUOW.org (June 10, 2020), [https://www.kuow.org/stories/this-26-year-old-died-three-times-after-police-hit-her-with-a-blast-ball?fbclid=IwAR3hOAdoAAkJ8czmKN0gKQ4K1ZTzi\\_M3DSgJZ93wowEeck1rTGcmutgnodg](https://www.kuow.org/stories/this-26-year-old-died-three-times-after-police-hit-her-with-a-blast-ball?fbclid=IwAR3hOAdoAAkJ8czmKN0gKQ4K1ZTzi_M3DSgJZ93wowEeck1rTGcmutgnodg); Evan Bush et al., *Sparked by Death of George Floyd, Seattle Protesters Clash with Police*, Seattle Times (May 29, 2020), <https://www.seattletimes.com/seattle-news/protesters-break-windows-clash-with-police-in-downtown-seattle/>; Christopher Frizzelle, *Kid at Seattle Protest Was Allegedly Maced by Cop*, The Stranger (May 30, 2020), <https://www.thestranger.com/slog/2020/05/30/43799417/kid-at-seattle-protest-was-allegedly-maced-by-cop>.
- <sup>15</sup> Task Force on 21st Century Policing, above note 6, at p.25. See, e.g., del Pozo, above note 12 (showing that when, in response to a peaceful crowd, bicycle police were replaced by officers in riot gear, demonstrators put up umbrellas, anticipating that chemical irritants would be deployed).
- <sup>16</sup> Colin Boyle (@colinbphoto), Twitter (June 4, 2020, 7:03 p.m.), <https://twitter.com/colinbphoto/status/1268679675792044032> (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”: NBC5 Chicago, *Officer Who Flipped Off Protesters Relieved of Police Powers* (June 10, 2020), <https://www.nbcchicago.com/news/local/chicago-police-officer-who-flipped-off-protesters-relieved-of-police-powers/2287340/>.
- <sup>17</sup> NYSAG, above note 1, at p.28 (citing testimony of journalist Matt Binder, who “witnessed what he perceived to be a hand gesture associated with white nationalism and white supremacy. The officer was eventually asked by his commanding officer to leave the protest but did not appear to have been reprimanded at the scene, according to Binder.”); Donald Orr, *Oregon State Police Deny Trooper Flashed Racist Symbol*, Oregon Public Broadcasting (July 5, 2020), <https://www.opb.org/news/article/oregon-state-police-salem-trooper-racist-hand-symbol/> (showing officer flashing white supremacist hand gesture); Ariel Zilber, *NYPD Officer Filmed Flashing White Power Hand Gesture and Laughing About It During George Floyd Protests*, Daily Mail (June 1, 2020), <https://www.dailymail.co.uk/news/article-8374797/NYPD-officer-flashes-white-power-hand-gesture-laugh-George-Floyd-protests.html>.
- <sup>18</sup> Bill Chappell, *Police Officers Slashed Car Tires During Minneapolis Protests*, Police Agencies Say, NPR (June 9, 2020), <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/06/09/873110812/police-officers-slashed-car-tires-during-minneapolis-protests-police-agencies-sa>.
- <sup>19</sup> See, e.g., Hannah Colton, *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 “Colton, Armed Civilian Groups”) (reporting that Albuquerque, NM, police “coordinated” with a local group of mixed martial-arts fighters and a far-right armed group “about patrolling these demonstrations”); Kalen Goodluck, *New Mexico’s Thin Blurred Line*, High Country News (July 20, 2020), <https://www.hcn.org/issues/52.8/south-corruption-new-mexicos-thin-blurred-line> (reporting that a police officer told an armed far-right group member, “We’re all here for the same cause, man,” and spoke to “a group of body-armored gym-goers and militiamen before a #BLM protest,” telling them, “We’re here to help.”).
- <sup>20</sup> See notes 21-30, below, and accompanying text.
- <sup>21</sup> See, e.g., Andrew Sheeler, *California Gunmen, Self-Proclaimed Militia Members Patrol Rural Black Lives Matter Protests*, Sacramento Bee (June 8, 2020), <https://www.sacbee.com/news/california/article243368196.html>; Colton, *Armed Civilian Groups*, above note 19; Editorial, *Don’t Be Fooled by Trump’s False Accusations*, Las Vegas Sun (June 24, 2020), <https://m.lasvegassun.com/news/2020/jun/24/dont-be-fooled-by-trumps-false-accusations/> (citing numerous examples of heavily armed far-right groups purporting to keep order at BLM protests); Nicolle Okoren, *The Birth of a Militia: How an Armed Group Polices Black Lives Matter Protests*, Guardian (July 27, 2020), <https://www.theguardian.com/us-news/2020/jul/27/utah-militia-armed-group-police-black-lives-matter-protests>; Casey Michel, *How Militias Became the Private Police for White Supremacists*, Politico (Aug. 20, 2017), <https://www.politico.com/magazine/story/2017/08/17/white-supremacists-militias-private-police-215498>; Isaac Stanley-Becker, *As Protests Spread to Small-Town America, Militia Groups Respond with Armed Intimidation and Online Threats*, Washington Post (June 18, 2020), [https://www.washingtonpost.com/national/as-protests-spread-to-small-town-america-militia-groups-respond-with-online-threats-and-armed-intimidation/2020/06/18/75c4655e-b0a1-11ea-8f56-63f38c990077\\_story.html](https://www.washingtonpost.com/national/as-protests-spread-to-small-town-america-militia-groups-respond-with-online-threats-and-armed-intimidation/2020/06/18/75c4655e-b0a1-11ea-8f56-63f38c990077_story.html); Anti-Defamation League, *Small But Vocal Array of Right Wing Extremists Appearing at Protests*, ADL Blog (June 10, 2020), <https://www.adl.org/blog/small-but-vocal-array-of-right-wing-extremists-appearing-at-protests> (documenting attendance by armed far-right groups at 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/article243430036.html> (noting that many California LEAs do not want armed far-right groups to attend demonstrations, but feel unable to stop them).

<sup>22</sup> Irby, *ibid.*; see also Sheeler, *ibid.* (Shasta County Sheriff saying, “In no way, shape or form ever would I embrace any kind of vigilante group, do any call to arms to ... deputize somebody or call someone in”); but see Stahl, *id.*

<sup>23</sup> See, e.g. Adam Rogan, *Police in Kenosha shared water, said they “appreciate” armed group before two killed*, The Journal Times (Aug 26, 2020), [https://journaltimes.com/news/local/police-in-kenosha-shared-water-said-they-appreciate-armed-group-before-two-killed/article\\_728054b3-363e-50da-9e70-326310588879.html](https://journaltimes.com/news/local/police-in-kenosha-shared-water-said-they-appreciate-armed-group-before-two-killed/article_728054b3-363e-50da-9e70-326310588879.html) (showing police giving water to armed far-right counter-demonstrators and telling them, “We appreciate you, we really do,” while simultaneous loudspeaker announcements tell BLM demonstrators to clear the streets); Jeremy Stahl, *Kenosha Police Chief Blames Protesters for their Own Deaths, Defends Vigilante Groups*, Slate (Aug. 26, 2020), <https://slate.com/news-and-politics/2020/08/kenosha-police-chief-daniel-miskinis-blames-protesters-for-own-deaths.html> (quoting Kenosha police chief, at a press conference after a member of a far-right armed group had killed two BLM demonstrators, characterizing members of far-right armed groups as “civilians out to protect property and “exercise their constitutional right,” and refusing to say whether he wanted such groups to attend any more BLM demonstrations); Colton, *Armed Civilian Groups*, above note 19; Arun Gupta, *Playing Cops: Militia Member Aids Police in Arresting Protester at Portland Alt-Right Rally*, Intercept (June 8, 2017), <https://theintercept.com/2017/06/08/portland-alt-right-militia-police-dhs-arrest-protester/>; Okoren, above note 21 (police deny coordination with armed far-right groups, but both police and armed far-right group members tell BLM demonstrators and reporters that armed far-right group members are “the first people [who would] take a bullet” to protect them).

<sup>24</sup> See Rogan, *id.* (showing a member of an armed far-right group saying that police had told his group that police would push BLM demonstrators past the armed counter-demonstration so his group could “deal with them,” just before a fellow armed far-right group member shot three BLM demonstrators). See also Colton, *Armed Civilian Groups*, above note 19; Gupta, *ibid.*

<sup>25</sup> 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, kneeling on them, and helping police to handcuff them: Gupta, above note 23; more recently, in Albuquerque, NM, police dispatchers were overheard describing “heavily armed friendlies” aiming guns at anti-racism demonstrators from rooftops: Colton, *Armed Civilian Groups*, above note 19; Rogan, *id.*

<sup>26</sup> Rogan, above note 24.

<sup>27</sup> Colton, *ibid.* An Albuquerque police officer posed for a video in which martial-arts fighters and members of armed far-right groups said their assignment from police was “to stop as much ‘shenanigans’ as possible with their size and their voice,” to which the officer replied, “I’m sure you can de-escalate just by talking to them.”

<sup>28</sup> Colton, *Armed Civilian Groups*, above note 19.

<sup>29</sup> Hannah Colton, *Protester Shot After Militiamen Raise Tensions at Oñate Monument*, KUNM (June 16, 2020), <https://www.kunm.org/post/protester-shot-after-militiamen-raise-tensions-o-ate-monument>.

<sup>30</sup> Rogan, above notes 23-25; Stahl, above note 23.

<sup>31</sup> Rogan, above note 24.

<sup>32</sup> BLM v. Seattle, above note 1, at p.6.

<sup>33</sup> IACP, above note 2, at p.6. It points out, “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.”

<sup>34</sup> *Id.*, at p.5.

<sup>35</sup> Cassandra Jaramillo, *“It Felt Like a Setup”: Protesters Arrested on Margaret Hunt Hill Bridge Decry Police Crowd Control Tactic*, Dallas News (June 2, 2020), <https://www.dallasnews.com/news/crime/2020/06/02/dallas-police-chief-renee-hall-says-demonstrators-broke-law-when-they-walked-onto-margaret-hunt-hill-bridge/> (police guided demonstrators onto the Margaret Hunt Hill Bridge, kettled them, and made 674 arrests for obstructing a freeway and one for unlawful carrying of a firearm); NYSAG, 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).

<sup>36</sup> IACP, above note 2, at p.8.

<sup>37</sup> See generally International Association of Chiefs of Police, *Model Policy: Crowd Management* (updated April 2019), s.IV(F), <https://www.theiacp.org/sites/default/files/2020-08/Crowd%20Management%20FULL%20-%2008062020.pdf>.

<sup>38</sup> See, e.g., *Abay v. City of Denver*, above note 1, at p.10, settled by the parties in light of Colo. SB-217 and TRO not extended, No. 2-cv-0616-RBJ (D. Colo. June 26, 2020).

<sup>39</sup> See generally *Abay v. City of Denver*, *ibid.*

<sup>40</sup> IACP, above note 2, at p.6.

<sup>41</sup> See, e.g., Harmeet Kaur, *The Military Is Banned from Using Tear Gas on the Battlefield, but Police Can Use It on Crowds at Home. Here’s Why*, CNN.com (June 8, 2020), <https://www.cnn.com/2020/06/08/us/military-tear-gas-protesters-trnd/index.html>; NYSAG, above note 1; *Abay v. City of Denver*, above note 1; *Williams v. City of Dallas*, No. 3:20-cv-05126-L (N.D. Texas June 11, 2020); *BLM v. Seattle*, above note 1; *Index Newspapers LLC v. City of Portland*, above note 1.

<sup>42</sup> 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/3211421001/> (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); Rohini 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”).

<sup>43</sup> Joseph J. Hout et al., *o-Chlorobenzylidene Malononitrile (CS Riot Control Agent) Associated Acute Respiratory Illnesses in a U.S. Army Basic Combat Training Cohort*, 179 *Military Medicine*, no. 7, 2014, 793–98 (finding increased incidence of acute respiratory illnesses, such as influenza, bronchitis, bronchiolitis, and pneumonia, in military recruits exposed to CS during basic training); American Thoracic Society, *Tear Gas Use During COVID-19 Pandemic Irresponsible; Moratorium Needed, Says American Thoracic Society* (Press release, June 11, 2020), <https://www.thoracic.org/about/newsroom/press-releases/journal/2020/tear-gas-use-during-covid-19-pandemic-irresponsible-moratorium-needed,-says-american-thoracic-society.php>.

<sup>44</sup> 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.”

<sup>45</sup> *E.g.*, *BLM v. Seattle*, at p.8.

<sup>46</sup> American Thoracic Society, above note 40.

<sup>47</sup> Will Stone, *Tear-Gassing Protesters During an Infectious Disease Outbreak Called “A Recipe for Disaster,”* NPR (June 5, 2020), <https://www.npr.org/sections/health-shots/2020/06/05/870144402/tear-gassing-protesters-during-an-infectious-outbreak-called-a-recipe-for-disast>.

<sup>48</sup> Hout, above note 40; American Thoracic Society, above note 40.

<sup>49</sup> Open letter from 1,288 infectious disease specialists, <https://drive.google.com/file/d/1Jyfn4Wd2i6Ri12ePghMHtX3ys1b7K1A/view>; American Thoracic Society, *ibid.*

<sup>50</sup> American Thoracic Society, *ibid.*; Open letter from 1,288 infectious disease specialists, *ibid.*

<sup>50</sup> American Thoracic Society, *ibid.*; Open letter from 1,288 infectious disease specialists, *ibid.*

<sup>51</sup> See, e.g., *Williams v. City of Dallas*, above note 38 (consent 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, pepperballs, mace, and other chemical agents in conjunction with protests” to control “peaceful crowds” or against any “protesters, 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 on Protesters*, CNN.com (June 6, 2020), <https://www.cnn.com/2020/06/06/us/portland-police-tear-gas-protests/index.html> (noting that Denver and Seattle had banned chemical weapons and projectiles 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.wweek.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 could 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-217 (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 used, orders to disperse be made, be audible, be repeated if 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-extend-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).

<sup>52</sup> *Williams v. City of Dallas*, *ibid.*

<sup>53</sup> IACP, above note 2, at p.5.

<sup>54</sup> NYSAG, above note 1, at p.28; Ali Watkins, *“Kettling” of Peaceful Protesters Shows Aggressive Shift by N.Y. Police*, New York Times (Jun. 5, 2020), <https://www.nytimes.com/2020/06/05/nyregion/police-kettling-protests-nyc.html> (describing NYPD officers encircling a group of “largely peaceful” demonstrators, then “charg[ing] in,” “swinging batons”); Tyler J. Davis & Nick Coltrane, “Violence Was from Police Only”: *Allegations of Kettling, a Controversial Police Tactic, Emerge After Monday Protests in Des Moines*, USA Today (June 23, 2020), <https://www.usatoday.com/story/news/crime-and-courts/2020/06/23/police-used-aggressive-kettling-tactics-des-moines-protesters-say/3241518001/> (quoting a demonstrator who said “Some people were dispersing and were chased, and other people weren’t given the opportunity and were grabbed within seconds”); Andrew Beaujon, *DC Police Again Turn to “Kettling,” A Controversial Crowd Control Technique*, Washingtonian (June 2, 2020), <https://www.washingtonian.com/2020/06/02/dc-police-again-turn-to-kettling-a-controversial-crowd-control-technique/>; Derek Hawkins, *On Swann Street, DC Protesters Needed a Refuge from Police, So One Resident “Just Opened a Door,”* Washington Post (June 2, 2020) (reporting that police blocked both ends of a block of Swann St, trapping demonstrators who were leaving the White House and deploying tear gas and OC spray against them); Jaramillo, above note 32 (reporting that Dallas demonstrators were kettled on a bridge, resulting in 674 arrests for blocking a freeway and one for unlawful carrying of a firearm); Michael Gordon, *Lawyers: Radio Traffic Shows Police Herded Marchers into a Waiting Ambush at Fourth Street*, Charlotte Observer (July 10, 2020), <https://www.charlotteobserver.com/news/local/crime/article244106492.html>.

<sup>55</sup> IACP, above note 2, at p.9.

<sup>56</sup> 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).

<sup>57</sup> See, e.g., Mike Desmond & Omar Fetouh, *Graphic Video: Two Buffalo Police Officers Suspended 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 & Rafferty, 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); Hallie Golden, *Outrage at Video 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-police-crowd-control-tactics-come-under-fire-by-people-injured-in-protests/> (after being hit in the eye by a rubber bullet, a woman and her friend had to “struggl[e] to get through a line of police barricades” to get to the friend’s car so that the friend could drive her to hospital); Jonathan 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. They then fired on the medics who 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).

<sup>58</sup> See, e.g., *Pell v. Procunier*, 417 U.S. 817 (1974); *Martin v. Gross*, 340 F.Supp. 3d 87 (D. Mass. 2018).

<sup>59</sup> 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/media/protests-journalists-arrested-assault/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 31, 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/bfbc322a-a342-11ea-b619-3f9133bbb482\\_story.html](https://www.washingtonpost.com/lifestyle/media/journalists-at-several-protests-were-injured-arrested-by-police-while-trying-to-cover-the-story/2020/05/31/bfbc322a-a342-11ea-b619-3f9133bbb482_story.html); NYSAG, above note 1, at p.17 (nine legal observers from National Lawyers Guild (NLG) “were wrongly arrested during the Bronx protest despite showing documentation that they were exempt from the Mayor’s curfew order. According to NLG, officers told the legal observers that they would 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.”).

<sup>60</sup> 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-pguide1.pdf](https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/public-pguide1.pdf)), restricts the circumstances in which person can be stopped from recording.

<sup>61</sup> *Ibid.*

<sup>62</sup> NOLA Manual, “Public Recording of Police Officers,” s.14.

<sup>63</sup> MPD General Order OPS-304-19, s.II.A, [https://go.mpdonline.com/GO/GO\\_304\\_19.pdf](https://go.mpdonline.com/GO/GO_304_19.pdf).

<sup>64</sup> New Orleans Police Department Operations Manual, ch.1.2.10, *Public Recording of Police Officers*, s.4. [https://www.nola.gov/getattachment/NOPD/Policies/Chapter-1-2-10-Public-Recording-of-Police-Officers-EFFECTIVE-4-30-17-\(1\).pdf](https://www.nola.gov/getattachment/NOPD/Policies/Chapter-1-2-10-Public-Recording-of-Police-Officers-EFFECTIVE-4-30-17-(1).pdf).

<sup>65</sup> See, e.g., District of Columbia Metropolitan Police (MPD), General Order OPS-304-19, *Video Recording, Photographing, and Audio Recording of Metropolitan Police Department Members by the Public* (July 19, 2012), [https://go.mpdonline.com/GO/GO\\_304\\_19.pdf](https://go.mpdonline.com/GO/GO_304_19.pdf), s.II.D.1.

<sup>66</sup> IACP, above note 2, at p.3.

<sup>67</sup> *Abay v. City of Denver*, above note 1, at p.10.

<sup>68</sup> 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.

<sup>69</sup> 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, [mourning bands] do not obstruct view of an officer’s identifying information,” but witnesses testified that the badges were worn to cover that information); Jonathan Ballew, *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).

<sup>70</sup> 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”); Dermot Shea (@NYPDShea), Twitter (April 16, 2020, 5:11 p.m.), <https://twitter.com/NYPDShea/status/1250894546982055938> (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/ydggdu28b>.

<sup>71</sup> See, e.g., Ballew, 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 Ballew, *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/>.

<sup>72</sup> See, e.g., Jonathan Levinson & Conrad Wilson, *Federal Law Enforcement Officers Use Unmarked Vehicles to Grab Protesters Off Portland Streets*, Oregon Public Broadcasting (July 16, 2020), <https://www.opb.org/news/article/federal-law-enforcement-unmarked-vehicles-portland-protesters/>; Steve Almasy, *Some Law Enforcement Officers At Protests Have No Badges and Some Have Covered Them. City Officials Say That Is Unacceptable*, CNN.com (June 5, 2020), <https://www.cnn.com/2020/06/05/politics/law-enforcement-badges-protests/index.html> (noting that in Washington, DC, “some officers in riot gear had no badges”); Philip Bump, *A Dangerous Factor In an Uneasy New Moment: Unidentified Law Enforcement Officers*, The Washington Post (June 4, 2020), <https://www.washingtonpost.com/politics/2020/06/03/dangerous-new-factor-an-uneasy-moment-unidentified-law-enforcement-officers/> (quoting reports of encounters with armed men without badges or nametags 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. Attorney has announced that federal agents “will be clearly identified by their agency’s visible badges or insignia”: NPR, *Federal Agents Will be “Clearly Identified” in Kansas City, Mo., U.S. Attorney Says* (July 21, 2020), <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/07/21/893936041/federal-agents-will-be-clearly-identified-in-kansas-city-u-s-attorney-says>.

<sup>73</sup> 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 has said he “want[s] a system where people can tell the difference.”: Lara Seligman, *Esper Concerned over Federal Agents Dressed Like Military Troops in U.S. Cities*, Politico (July 21, 2020), <https://www.politico.com/news/2020/07/21/esper-federal-agents-military-protests-376381>.

<sup>74</sup> Mihir Zaveri, *Video of NYPD Pulling Protester into Unmarked Van Draws Criticism*, New York Times (July 28, 2020), <https://www.nytimes.com/2020/07/28/nyregion/nypd-protester-van.html>. An NYPD statement later stated that the protester had been arrested pursuant to an outstanding warrant: *ibid*.

<sup>75</sup> “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/2020/07/17/ae5dbf18-c871-11ea-8ffe-372be8d82298\\_story.html](https://www.washingtonpost.com/national-security/portland-officials-decry-aggressive-tactics-of-federal-agents-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 indistinguishable from the open-carrying, white militia members cosplaying as survivalists who have gathered in other recent demonstrations against pandemic stay-at-home orders.”: Garrett M. Graff, *The Story Behind Bill Barr’s Unmarked Federal Agents*, Politico (June 5, 2020), <https://www.politico.com/news/magazine/2020/06/05/protests-washington-dc-federal-agents-law-enforcement-302551>. For discussion of far-right armed groups purporting to keep order at demonstrations, see text and endnotes accompanying Recommendation 10, above.

<sup>76</sup> For discussion of far-right armed groups being allowed by police to use force on demonstrators and assist with arrests, see text and sources accompanying Recommendation 10, above.

<sup>77</sup> Sergio Olmos, *Federal Officers Deployed in Portland Didn’t Have Proper Training, DHS Memo Said*, New York Times (July 18, 2020), <https://www.nytimes.com/2020/07/18/us/portland-protests.html?action=click&module=Top%20Stories&pgtype=Homepage> (federal agents deployed in Portland had “not [been] specifically trained in riot control or mass demonstrations”).

<sup>78</sup> “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 Kenno-Youngs & Katie Benner, *Trump Deploys Full Might of Federal Law Enforcement to Crush Protests*, New York Times (June 12, 2020), <https://www.nytimes.com/2020/06/02/us/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/@wkc6428/the-lead-federal-agency-responding-to-protesters-in-portland-employs-thousands-of-private-db137349f8b0> (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).

<sup>79</sup> See, e.g., Jemima McEvoy, *Seattle Police Use Tear Gas Against Protestors Despite City Ban*, forbes.com (June 8, 2020), <https://www.forbes.com/sites/jemimamc-evoy/2020/06/08/seattle-police-use-tear-gas-against-protestors-despite-city-ban/#51d6822c5b4b>. See also Portland: <https://www.wweek.com/news/2020/07/01/hours-after-gov-kate-brown-signs-tear-gas-ban-into-law-portland-police-deploy-more-gas-onto-protesters/>.

<sup>80</sup> See generally 18 U.S.C. § 242; USDOJ, *Law Enforcement Misconduct* (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).

<sup>81</sup> 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/1263237764574822408> 95,691; New York Police Department, *About NYPD*, <https://www1.nyc.gov/site/nypd/about/about-nypd/about-nypd-landing.page> (accessed Aug. 2, 2020).

<sup>82</sup> 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 Delaney, *DC Branch of ACLU Wants Face Masks to Be Mandatory for DC Police*, WTOP News (July 19, 2020), <https://wtop.com/dc/2020/07/dc-branch-of-aclu-wants-face-masks-to-be-mandatory-for-district-police/>; Emily Elena Dugdale, *They Got the Memos, But LA Cops Still Aren’t Wearing Masks*, LAist (July 6, 2020), [https://laist.com/2020/07/06/they\\_got\\_the\\_memos\\_but\\_l-a\\_cops\\_still\\_arent\\_wearing\\_masks.php](https://laist.com/2020/07/06/they_got_the_memos_but_l-a_cops_still_arent_wearing_masks.php); KPCC, *Los Angeles Officers Seen Not Wearing Masks* (July 3, 2020), <https://www.facebook.com/kpcc/videos/277515496842747/>; 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/2020/6/5/21281684/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).

<sup>83</sup> 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.

<sup>84</sup> LAPD and LA Sheriff’s Department policies linked at Dugdale, above note 79.

<sup>85</sup> “Many [protesters] testified that during the course of their arrests, the masks worn to protect against COVID-19 transmission fell down from their faces or were removed 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.

<sup>86</sup> “[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*.





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