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[115] See, e.g. Hartford PD, G.O. 1.09 Bias-Based Policing, s. C(I), https://www.powerdms.com/public/HARTPD/tree/documents/604306 ("All complaints shall be investigated, and corrective measures shall be taken if it is determined that bias based profiling has occurred."); Miami PD, Departmental Order 2, Chapter 1 Internal Affairs, https://www.miami-police.org/DeptOrders/MPD_Departmental_Orders.pdf: ("In order to ensure the integrity of the Miami Police Department (MPD) it is necessary to promptly and thoroughly investigate suspicions or allegations, from whatever source, of misconduct by Departmental personnel.").

[116] Boston PD, for example, establishes an Anti-Corruption Division that is responsible for "proactive and reactive investigations." Among other responsibilities, this division is responsible for conducting proactive monthly review of community and internal complaints "for indicators of misuse of authority by a Departmental employee or misuse of City of Boston employee status for material gain"; review the findings of internal investigations for "patterns of conduct which are indicative of corrupt police behavior"; monitor any criminal or corruption-related investigation of any employee; "operate a reporting method" for members of the community to report corruption; "immediately notify" the Police Commissioner and the Bureau of Professional Standards and Development "when any significant suspicion of corruption enters an investigation," as well as informing the employee's supervisor "when such notification would not negatively impact an on-going investigation"; co-ordinate anti-corruption training; and review and report on any corruption investigations whenever an employee or officer is up for promotion or commendation. Boston PD Rules and Procedures, Rule 113, Public Integrity Policy, s. 6(1) "The Anti-Corruption Division," https://static1.squarespace.com/static/5086f19ce4b0ad16ff15598d/t/52af5e9ce4b0dbce9d22a755/1387224732197/Rule+113.pdf.

[117] IACP, Concepts & Issues, above note 44, at 3-4.

[118] IACP, Id.

[119] IACP, id. See, e.g. Hartford PD, G.O. 1.09 Bias-Based Policing, s. C(3) ("Supervisors ... shall be alert to any pattern or practice of possible discriminatory treatment or bias based profiling by officers.").

[120] IACP, id.

[121] See, e.g. Ba, B.A., Knox, D., Mummolo, J., & Rivera, R. (2021). The Role of Officer Race and Gender in Police-Civilian Interactions in Chicago. Science, 371(6530), 696-702. DOI: 10.1126/science.abd8694

[122] Oregon's Department of Public Safety Standards and Training, for example, operates such a database: The Oregon Criminal Justice Information Records Inquiry System (CJ IRIS), http://dpsstnet.state.or.us/PublicInquiry_CJ/smsgoperson.aspx.

[123] Conn. Gen. Stat., Section 7-294d(c)(2)(I), https://portal.ct.gov/-/media/POST/GENERAL_NOTICES/2020/2009-Guidance-Language-PA201-Revised-Guidance.pdf.

[124] CT POST, s. 3(A), https://portal.ct.gov/-/media/POST/GENERAL_NOTICES/2020/2009-Guidance-Language-PA201-Revised-Guidance.pdf.

[125] CT POST, s. 4, lists the following questions as potential aggravating or mitigating factors that the POST can consider: Does the conduct grossly deviate from the generally accepted standards and behavior of law enforcement? Does the conduct subject an officer to impeachment in a court of law based on prior misconduct? Did the conduct negatively and irreparably affect working relationships or otherwise interfere with the operation of a law enforcement unit?

[126] ADL Center on Extremism, *When Women are the Enemy: The Intersection of Misogyny and White Supremacy* (2018), https://www.adl.org/media/11707/download.

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WHITE SUPREMACY IN POLICING:
How Law Enforcement Agencies Can Respond

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DETAILED RECOMMENDATIONS

Armed gangs and groups of avowed racists should play no role in contemporary law enforcement. Too often, though, police officers have affiliated themselves with groups dedicated to White supremacy ("hate groups") and armed gangs dedicated to the violent overthrow of elected governments ("paramilitary gangs," which often style themselves "militias"). Hate groups and paramilitary gangs urge their members to prepare for a "civil war" in which they will fight immigrants, anti-racist protesters, Democrats, and elected politicians.[1] The violence they seek is plainly unlawful,[2] and their goals are incompatible with police officers' oath to uphold the Constitution and enforce the laws.[3] Whether a group is dedicated to racism[4], or advocates the overthrow of elected governments, or both[5]—no police officer or law enforcement agency ("LEA") should affiliate with it.

This guide offers concrete, actionable steps that law enforcement agencies can take to identify, discipline, and remove officers whose ties to hate groups and paramilitary gangs make them unsuitable for police work. It also recommends policy measures LEAs can take to establish an institutional culture in which no officer can imagine that hate groups and paramilitary gangs are aligned with the values and practices of law enforcement.

BACKGROUND

The Federal Bureau of Investigation has long identified White supremacist and anti-government terrorism as primary threats to the domestic security of the United States.[6] On January 6, 2021, Americans across the country witnessed the severity of this threat as a group of violent demonstrators, led by organized groups of armed White supremacists and other paramilitary gangs,[7] attacked the United States Capitol in an attempt to prevent Congress from certifying the results of the 2020 presidential election. Many police officers risked their lives to defend the lawmakers and staffers who were trapped inside. More than 140 police officers were injured during the attack on the Capitol, many of them severely.[8] Capitol Police Officer Brian Sicknick was murdered by the attackers, and two other Capitol police officers died by suicide days later.[9]

Despite the heroic actions of the officers who defended the Capitol[10] without adequate equipment, authority, staffing, planning, or support,[11] it appears that dozens of police officers from across the country participated in the attack.[12] Many of the officers who were tasked with defending the Capitol appear to have helped the attackers: for example by opening the barricades,[13] giving directions around the Capitol to the attackers inside,[14] and escorting the attackers down the steps of the Capitol once the attack had been repelled.[15] Thirty-five Capitol Police officers are being investigated for their behavior during this attack, and six have been suspended.[16]

January 6 was not the first time that law enforcement entanglement with hate groups and paramilitary gangs came to light.[17] Since 2017, one research project has documented thousands of social media posts by police officers endorsing violence, racism, and other forms of bigotry.[18] In Philadelphia, hundreds of active police officers were found to have posted such content online,[19] resulting in the suspension of 72 officers and the dismissal of 13 of them.[20] In many towns and cities, police have been recorded expressing support for avowed White supremacist demonstrators,[21] making White supremacist hand gestures, and wearing paramilitary gang paraphernalia on their uniforms.[22] Some officers have failed to protect people against White supremacist violence that occurred in front of them.[23] Some LEAs have even invited unsworn, untrained, heavily armed paramilitary gangs to participate in crowd management,[24] asking hate groups and paramilitary gangs to assist police with control of anti-racist demonstrations.[25] Law enforcement cooperation with hate groups and paramilitary gangs heightens the risk of escalation and violence.[26]

E Prohibit retaliation against those who report discriminatory misconduct, and ensure that the anti-retaliation provisions are enforced.

F Require mandatory investigation of every allegation of discriminatory misconduct, whether internal or external.

G Impose rigorous investigative and adjudication procedures for discrimination complaints, outside the chain of command.

H Establish thresholds for early intervention.

10 Review and implement recruitment and hiring processes to ensure that they are fair, equitable, and will yield a work force that can connect with all communities served by the department.

Statewide rulemaking

11 State Peace Officer Standards and Training (POST) Commissions can support this guidance by taking the following steps:

A Adopt policies that require or encourage LEAs to take the steps recommended in this guidance;

B Screen candidates for police employment, or require LEAs to screen them, for hate group and paramilitary gang affiliations (see Recommendation 6, above);

C Decertify officers for hate-group or paramilitary-gang membership, if LEAs fail to remove them; and

D Maintain a searchable, public online database of law enforcement certification and decertification records.

Consulting with the community

12 Partner with communities to identify local hate groups and paramilitary gangs that may raise particular concern, and to help monitor their activity and identify their members.

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

WHITE SUPREMACY IN POLICING: HOW LAW ENFORCEMENT AGENCIES CAN RESPOND

INTRODUCTION

Whether a group is dedicated to racism (a "hate group"), or advocates the overthrow of elected governments (a "paramilitary gang"), or both—no police officer or law enforcement agency should support or affiliate with it. Officers who support or affiliate with hate groups and paramilitary gangs undermine the mission of their law enforcement agency by allying themselves with lawbreakers and by undermining the department's efforts to ensure equitable policing and earn community trust.

These guidelines aim to assist law enforcement to 1) identify, discipline, and remove officers who intentionally affiliate with hate groups or paramilitary gangs, and 2) adopt institutional values, policies, and rules that will allow for no mistake about the department's position: it is not appropriate for a law enforcement agency or a police officer to support or affiliate with hate groups or paramilitary gangs. We recommend that law enforcement agencies ("LEAs") adopt the rules and best practices set out below, and make them public.

SUMMARY OF RECOMMENDATIONS

Prohibiting hate groups, paramilitary gangs, and discriminatory misconduct

1. Explicitly prohibit officers from advocating for and associating with hate groups and paramilitary gangs.

2. Consider how existing state laws, municipal bylaws, and existing prohibitions on criminal associations may apply to hate groups and paramilitary gangs.

3. Consult with the city attorney or county counsel's office to ensure that rules against association with hate groups and paramilitary gangs comply with the First Amendment and serve departmental values, effectiveness, reputation, and community trust.

4. Prohibit the use of racist and other discriminatory language, jokes, statements, and gestures. Ensure that standards for interaction with colleagues and the public, and rules for conduct unbecoming, explicitly prohibit discrimination and the use of racial epithets.

5. Prohibit the display of patches, tattoos, symbols, and insignia of hate groups or paramilitary gangs, whether the officer is on or off duty.

6. Conduct initial and periodic background checks, including social media review, that will flag affiliation with hate groups and paramilitary gangs.

7. Adopt departmental social media policies that explicitly prohibit posts, "likes," jokes, memes, retweets, and other statements that advocate racism, violence, misogyny, homophobia, or other kinds of hate or discrimination.

Affirming agency commitment to racial equity

8. Adopt written policies that expressly affirm the department's commitment to racial justice and non-discrimination.

9. Ensure that allegations of discriminatory misconduct are subject to rigorous investigation and, where substantiated, appropriate discipline, up to and including dismissal.

    A. Prohibit profiling, discrimination, and harassment on the bases of race, gender, sexual orientation, gender identity, religion, disability, and other protected status.

    B. Ensure that the means and method for filing a complaint are readily accessible by members of the community.

    C. Impose a duty on officers, including supervising officers, to report discriminatory misconduct.

    D. Reinforce the duty to report discriminatory misconduct through affirmative verbal encouragement by leadership.

Many White supremacist groups and paramilitary gangs seek to ally themselves with law enforcement, wearing outfits that resemble those of soldiers and police,[27] shouting "Blue Lives Matter,"[28] and flying a flag that replaces the stars and stripes with a black-and-white copy divided by a "Thin Blue Line."[29] Several hate groups and paramilitary gangs, such as the Oath Keepers and a neo-Nazi group called The Base, actively seek to enlist current and former police officers and members of the military to benefit from their social credibility and firearms expertise.[30] But even as the January 6 attackers told officers defending the capitol, "We're on your side,"[31] they tortured, beat, and killed police officers who stood in their way.[32] Some of the paramilitary and White supremacist protesters used flagpoles bearing "Blue Lives Matter" and US Marine flags to severely beat police officers;[33] one attacker, a former police officer, severely beat an MDC officer with a flagpole and tried to gouge out his eye.[34]

Nonetheless, recent events demonstrate that too many officers have allied themselves with White supremacists and paramilitary gangs, and too many LEAs have tolerated their officers' participation in White supremacist groups.[35] Unfortunately, as described above, a number of LEAs have treated hate groups and paramilitary gangs as partners in law enforcement,[36] and many officers have worn their insignia on their uniforms.[37] Some police chiefs and union leaders have further muddied the waters by announcing their views that violence by hate groups and paramilitary gangs may be justified, or that their political violence was morally equivalent to nonviolent anti-racist protest.[38] Such messages risk persuading some officers, who may not themselves sympathize with hate groups or paramilitary gangs, that such groups are allies of law enforcement. Many officers have been shown responding to armed and violent groups as though they believed that these groups were on the same side as police.[39]

The recommendations CPE provides in this document are designed to assist law enforcement in two main ways: 1) to identify, discipline, and remove officers who intentionally affiliate with hate groups or paramilitary gangs, and 2) to adopt institutional rules and values aimed at ensuring that never again can any officer or employee claim to believe it is appropriate to affiliate with hate groups or paramilitary gangs. We recommend that law enforcement agencies adopt the rules and best practices set out below, and make them public.

Recent events demonstrate that too many officers have allied themselves with White supremacists and paramilitary gangs.

We have grouped our recommendations into four categories, encompassing what LEAs, statewide commissions on police officer standards, and community can do together to address the threat of law enforcement entanglement with hate groups and paramilitary gangs.

Prohibiting hate groups, paramilitary gangs, and discriminatory misconduct

1 **Explicitly prohibit officers from advocating for and associating with hate groups and paramilitary gangs.** To ensure that "officers have a clear understanding of agency expectations pertaining to conduct and activities while on and off duty,"[40] the International Association of Chiefs of Police (IACP) recommends that LEAs should provide clear and specific guidance about the on- and off-duty behaviors and associations the department does not allow. Departmental prohibitions on discrimination or racial profiling should not be limited to cases of overt discrimination on the job. If they have not already done so,[41] LEAs should explicitly forbid officers to join, advocate for, or voluntarily associate with hate groups and paramilitary gangs, just as they prohibit association with other criminal groups and gangs. Such affiliations can adversely affect the credibility of the department and its effectiveness at law enforcement.

LEAs should adopt rules ***forbidding officers and nonsworn employees to join, advocate for or voluntarily associate with*** any:

- ***hate groups***, defined as any person or group that "advocates, incites, or supports criminal acts or criminal conspiracies or that promotes hatred or discrimination toward racial, religious, ethnic, sexual, gender, or other groups or classes of individuals protected by law";[42]
- ***paramilitary gangs***, defined as any person or group that advocates the overthrow of the U.S. government or any state, municipal, tribal, or other government by force or violence or any unlawful means;[43]
- ***criminal organizations***: any person, organization or group of persons that advocates, incites, or supports criminal acts or criminal conspiracies;[44] and
- any other person or group if the officer or employee "knows, or should know," that that association is "likely to adversely affect the employee's or the department's credibility."[45]

To minimize disputes over technicalities such as, for example, whether an avowed White supremacist group (such as the Proud Boys) is truly a "hate group" or is merely an association of "Western chauvinists," or whether a group (such as the Boogaloo Boys) dedicated to promoting a "race war" by assaulting non-White people and those perceived as "Antifa" truly aims to overthrow the government, we recommend that LEAs prohibit voluntary association with hate groups, paramilitary gangs, criminal organizations, and other associations that are likely to affect individual credibility and departmental legitimacy on the same terms.

Each of these association prohibitions should contain an exception for marital and family relationships and for "contacts legitimately made in the line of duty."[46] Furthermore, these rules should impose a duty to immediately disclose to a supervisor any family, household, online, or other relationship where contact with prohibited groups or people is unavoidable.[47] Officers who fail to disclose such associations should be subject to disciplinary sanctions.

When police officers join, support, or advocate for hate groups or paramilitary gangs, they raise questions not only about their own fairness, judgment, and commitment to lawful policing, but also impair the credibility and legitimacy of a department that aims to equitably serve all communities within its jurisdiction. Many LEAs invest considerable time, effort, and expense to cultivate community trust. An officer who supports or associates with hate groups or paramilitary gangs tends to sabotage that investment. Such affiliations, like affiliations with other lawbreakers and criminal organizations, may be "likely to damage public trust; adversely affect the officer's credibility or integrity; or create the appearance of impropriety, a conflict of interest, or corruptive behavior."[48] The goal of association prohibitions, then, is to ensure that every sworn officer and non-sworn employee of the department, as well as members of the public at large, understand that officer involvement with a hate group, criminal organization, or paramilitary gang is not compatible with the mission or values of the department, and is likely to impede the department's mission to secure public safety by undermining departmental morale and community trust.[49]

Furthermore, by adopting rules that explicitly prohibit such involvement, LEAs can disrupt any expectation that such affiliations will be tolerated. The adoption of explicit prohibitions on hate-group and paramilitary-gang association will put officers who advocate for or affiliate with such groups on notice that they will be held accountable for such choices. Moreover, explicit rules alert other officers that hate groups and paramilitary gangs are not allies of law enforcement, and that those groups' actions and values are opposed to those of the department.

Hate groups and paramilitary gangs are not allies of law enforcement.

2 **Consider how existing state laws, municipal bylaws, and existing prohibitions on criminal associations may apply to hate groups and paramilitary gangs.** The specific prohibitions set out in Recommendation 1 are designed to underline the department's commitment to racial equity, and to clarify that hate groups and paramilitary gangs are inconsistent with the department's mission and values (see also Recommendation 8, below). Nonetheless, departments should consider whether existing prohibitions on associating with criminal gangs and advocating criminal activities already apply to hate groups and paramilitary gangs. Where an officer's affiliation with a hate group or paramilitary gang pre-dates the adoption of an explicit prohibition on such membership, it may nonetheless have been prohibited by rules that forbid officers to advocate criminal activity or to associate with criminal organizations and people known or reputed to be involved in crime.

It is likely that hate groups and paramilitary gangs such as the Proud Boys, Oathkeepers, Three Percenters, and the Ku Klux Klan would meet the criteria set out by typical departmental prohibitions on criminal association. Such provisions often prohibit association with "any organization which advocates the violation of any of the laws, statutes, or ordinances of federal, state, or local governments,"[50] or forbid employees to "knowingly commence or maintain a relationship with or associate with convicted criminals or any person who is under criminal investigation, indictment, arrest, or incarceration ... [or] with any person possessing a notorious reputation in the community."[51]

Although criminal violence by armed White supremacist organizations has been identified by the FBI and other observers as a prime threat to domestic security in the United States,[52] most North Americans use the word "gang" to describe groups of lawbreakers who are Black or Latinx and live in cities, rather than armed lawbreakers who are White and live in rural or exurban areas. A large majority of people listed in LEA gang databases are Black, Latinx, Native, or Asian.[53] But the terms of many LEAs' existing prohibitions on criminal association may also apply, on their face, to hate groups and paramilitary gangs. For example, the New Orleans Police Department (PD) defines a "criminal street gang" as

> Any ongoing organization, association or group of three or more persons, whether formal or informal ... that:
>
> (a) Has as one of its primary activities the commission of one or more criminal acts defined by state law as criminal street gang predicate crimes [aggravated or second-degree battery; armed robbery; first- or second-degree murder or manslaughter; sale, possession for sale, transportation, manufacture, offer for sale, or offer to manufacture controlled substances; illegal use of weapons or dangerous instrumentalities; aggravated arson; intimidating, impeding, or injuring witnesses or injuring officers; and theft of any vehicle, trailer, or vessel[54]], or
>
> (b) Has a common name or common identifying sign or symbols, whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity.[55]

Hate groups, such as the Proud Boys and Ku Klux Klan, and paramilitary gangs, such as the Oathkeepers and Three Percenters, are notorious for advocating and committing offenses such as assault (including assault upon police officers[56]), illegal use of weapons, arson, and murder.[57] The terms of existing criminal-association rules, then, should put officers on notice that their association with hate groups or paramilitary gangs is prohibited and discredits the department's effectiveness and legitimacy.

Consult with the city attorney or county counsel's office to ensure that rules against association with hate groups and paramilitary gangs comply with the First Amendment and serve departmental values, effectiveness, reputation, and community trust. Police officers, like all other people in the United States, enjoy First Amendment rights to freedom of speech and freedom of association. But, like other government employers, police departments have considerable authority to restrict their employees' speech and associations, both on- and off-duty, when the speech or association "has some potential to affect [the government agency's] operations."[58] If an officer's speech forms part of the their official job duties, it may not be protected by the First Amendment at all.[59] But, in most cases, the Court balances government employees' interest in commenting on matters of public concern against the employer's interest in "promoting the efficiency of the public services it performs through its employees."[60] LEAs should consult with counsel to ensure that the department's restrictions on racist speech and hate group or paramilitary gang associations comply with Constitutional constraints.

Federal courts have tended to find that departmental interests in effectiveness, reputation, credibility, and community trust outweigh an officer's interest in saying racist things or maintaining White supremacist associations. Federal courts have recognized that LEAs have a "heightened need for order, loyalty, morale, and harmony, which affords a police department more latitude in responding to the speech of its officers than other government employers."[61] Furthermore, courts have recognized the strong interest of LEAs in having a reputation for impartiality.[62] Federal courts have recognized that the presence of "a known racist police officer on the force"[63] belies the LEA's mission of just and equitable policing.

An officer who associates with known lawbreakers, groups that advocate lawbreaking, or groups that plan to overthrow elected governments raises concerns about the LEA's commitment to evenhanded enforcement of the laws, as well as about the security of investigative information and techniques. An officer's hate group association or racist speech will tend to undermine community trust that non-White people will be treated fairly by police,[64] and is also likely to disrupt relationships with non-White and non-racist coworkers, undermining departmental cohesion, morale, loyalty and trust.[65] Furthermore, an officer's affiliation with a hate group or paramilitary gang could be used to impeach their credibility at trial, undermining the department's ability to enforce criminal laws.[66] All of these considerations tend to support the constitutionality of LEA rules that prohibit advocacy for and association with hate groups and paramilitary gangs. Accordingly, a number of courts have upheld police departments' decisions to discipline or terminate officers who engaged in racist behavior or affiliated with hate groups.[67]

4 **Prohibit the use of racist and other discriminatory language, jokes, statements, and gestures. Ensure that standards for interaction with colleagues and the public, and rules for conduct unbecoming, explicitly prohibit discrimination and the use of racial epithets**. Uniformed police officers have been recorded making racist remarks[68] and photographed making White supremacist hand gestures.[69] To send an unambiguous message, departments should clarify that such language and gestures are prohibited.[70] Department policies should explicitly forbid officers to make racial, gendered, homophobic, and other discriminatory slurs, jokes, or remarks, whether they are on or off duty.

Departmental rules governing respectful interaction with the public should explicitly prohibit officers and other employees to demonstrate any prejudice or discrimination on the bases of race, ethnicity, religion, national origin, gender, gender identity, sexual orientation, disability, or any other ground of discrimination. They should also specifically prohibit the use of "racial or ethnic remarks, slurs, epithets, words, or gestures."[71]

Department policies should explicitly forbid officers to make racial, gendered, homophobic, and other discriminatory slurs, jokes, or remarks, whether they are on or off duty.

The prohibition on discriminatory behavior and racial epithets should extend beyond the officer's on-duty interactions with the public. Off-duty discriminatory misconduct can be captured both by an explicit prohibition on discrimination (see Recommendations 8 and 9, below) and by prohibition within the department's standards for conduct unbecoming an officer.[72] Departmental rules declaring that that "Every employee shall engage in behavior that is beyond ethical reproach and reflects the [department's] mission and values,"[73] for example, should be operationalized with explicit definitions that prohibit racist words and discriminatory behavior.

The IACP recommends that departmental definitions of "conduct unbecoming" should prohibit behavior, whether on or off duty, that: "a) casts doubt on [the officer's] integrity, fairness, honesty, moral judgment, or character; b) brings discredit to this agency; c) discriminates intentionally on the basis of race, religion, ethnicity, gender, gender identity, sexual orientation, disability, or any other ground of discrimination; or d) otherwise impairs the agency's efficient and effective operation."[74]

Every candidate for police employment should be subjected to a background check that includes a comprehensive review of their social media accounts and postings, as well as their criminal history, substance use, and any history of professional misconduct, domestic or other violence, dishonesty, internal or external complaints, intentional discrimination, and affiliation with or intentional support of a hate group or paramilitary gang.[86] If the background check finds that a candidate advocates for or affiliates with a hate group or a paramilitary gang, that finding should eliminate the candidate from consideration. To ensure the completeness of social media checks, LEAs should (where permitted by state law) require applicants to disclose every social media account they use, any social media account they may have deleted in the past year, and the reason for deleting it. Failure to disclose any social media accounts should be misconduct subject to disciplinary sanctions.

The department should also mandate annual employee integrity checks[87] to identify any new or previously unreported criminal convictions, community complaints (*e.g.*, allegations of discrimination, rudeness, or excessive force), employee-relations complaints (*e.g.* sexual or racial harassment, or other unprofessional behavior), social media postings, or criminal, hate group, or paramilitary gang associations. The introduction of these requirements should be the subject of initial training and of periodic refresher training.

Police officers should be held to rigorous standards of nondiscriminatory speech both on and off-duty, in real life and on social media.

7 **Departments should adopt social media policies that explicitly prohibit posts, "likes," jokes, memes, retweets, and other statements that advocate racism, violence, misogyny, homophobia, or other kinds of hate or discrimination.** To protect the department's credibility, its legitimacy in the community, and its public safety mission, police officers should be held to rigorous standards of nondiscriminatory speech both on and off-duty, in real life and on social media. The departmental social media policy should forbid employees to engage in any speech or activity, online or offline, "that would produce a reasonable expectation of harm to the reputation of [the LEA], the City, or any City employee."[88] The policy should also specify that any speech, writing, images, or posts (including memes, likes, and retweets) that mock, insult, or otherwise express prejudice against any race, any religion, or any protected class of individuals,[89] and any form of speech (including memes, likes, and retweets) that is likely to be construed as a racial or religious slur or joke,[90] is likely to harm the reputation of the department and the city.

Furthermore, LEA policy manuals should caution their employees that online content is never private, even if it takes place in a "private" group or forum or is subsequently deleted, and that anything an officer says or does online might become public and reflect on the department.[91] Hartford PD therefore cautions its employees to "expect that any information created, transmitted, downloaded, exchanged, or discussed in a public online forum may be accessed by the Department at any time without prior notice."[92]

Each department's social media policy should explicitly warn officers that breaches of the policy are subject to "discipline up to and including termination of office as outlined by the Code of Conduct."[93]

Standards for conduct unbecoming, like all other prohibitions on discriminatory misconduct, should specify "a nexus between the conduct and the efficiency of service and be linked effectively to an agency's code of conduct and values. ... In all cases of conduct violations, the agency must be prepared to defend its position based on the connection of the behavior to negative outcomes on the agency's officers and mission."[75] As was explained under Recommendations 1 and 3, above, racist conduct and voluntary association with hate groups and paramilitary gangs likewise contravene the agency's mission and impede its effectiveness.

As the IACP recommends, the introduction of new standards of good conduct should be socialized within the department through "in-service training on an initial basis upon introduction of the policy and on a periodic basis thereafter."[76]

5 **Prohibit the display of patches, tattoos, symbols, and insignia of hate groups or paramilitary gangs, whether the officer is on or off duty.** As the New Orleans PD policy manual points out, the police officer's uniform should be "a symbol of neutral government authority, free from expressions of personal bent or bias toward the public and other members of the Department."[77] Nonetheless, many police officers have been photographed wearing patches, tattoos, or insignia of White supremacist or paramilitary gangs such as the Three Percenters, Proud Boys, and Oath Keepers, as well as affiliations associated with confrontational policing, such as Thin Blue Line[78] and Punisher,[79] all of which tend to undermine the mission of departments that seek to ensure officer integrity and build community trust.[80] LEAs should adopt uniform regulations, such as that of Hartford PD, to prohibit the wearing of any badges, pins, or patches on the uniform, except for those approved in writing by the police chief.[81] Appearance regulations should also prohibit the display of tattoos that advocate violence or discrimination.[82]

When an officer is not in uniform or not on duty, the display of such patches, tattoos, or insignia, whether on the officer's skin, clothing, or their private vehicle, is still likely to impair the department's legitimacy and effectiveness by undermining its officers' reputation for fairness (see Recommendations 1 and 3, above, and 9(a), below).

> Patches, tattoos, symbols, and insignia of hate groups or paramilitary gangs... undermine a department's reputation for fairness.

6 **Conduct initial and periodic background checks, including social media review, that will flag affiliation with hate groups and paramilitary gangs.** Nearly every LEA conducts background checks upon candidates for employment as a police officer, but the rigor of these background checks varies widely among departments. Not every department identifies bigoted views, misogynistic behaviors, or advocacy of violence as an indicator that a candidate may be unsuitable for police work.[83] Some departments and POST commissions, for example, simply check a candidate's record for criminal convictions.[84] Skeletal background checks such as these cannot identify other behavioral histories which may indicate a candidate's unsuitability for police employment, such as a history of professional misconduct, domestic or other violence, substance dependency, dishonesty, internal or external complaints, intentional discrimination, or affiliation with or intentional support of a hate group or paramilitary gang.[85]

> If a background check finds that a candidate advocates for or affiliates with a hate group or a paramilitary gang, that finding should eliminate the candidate from consideration.

Affirming agency commitment to racial equity

8 **Adopt written policies that expressly affirm the department's commitment to racial justice and non-discrimination.** Most departments have a prohibition on racial profiling or discrimination, or a statement that officers should treat people fairly and equitably.[94] Recent events, however, demonstrate a lack of consensus over whether involvement in White supremacist or paramilitary groups is, or is not, consistent with the role of law enforcement.[95] LEAs should leave no doubt as to where they stand.

The IACP observes that "affiliation with so-called 'hate groups' that espouse or support criminal acts or criminal conspiracies are among those that run counter to the core values of law enforcement. Any affiliation of officers with such groups has a significant debilitating effect on the reputation of officers and their law enforcement agency,"[96] and undermines the department's investment of time and resources in cultivating cooperative relationships in the community. By adopting new rules and policies, backed by appropriate investigative procedures and disciplinary sanctions, LEAs can convey to officers, employees, and the public, if it was not clear before, that the LEA repudiates racial hatred and anti-government violence.

To that end, the IACP urges LEAs to forbid officers to "knowingly join or participate in any organization that advocates, incites, or supports criminal acts or criminal conspiracies or that promotes hatred or discrimination toward racial, religious, ethnic, or other groups or classes of individuals protected by law."[97]

We recommend that the departmental statement of values elaborate on such commitments, for example by affirming the LEA's "commitment to the impartial enforcement of law, the protection of constitutional rights, and the safety and dignity of all people, including those who are under investigation or arrest, without discrimination on the basis of race, religion, ethnicity, national origin, gender, gender identity, sexual orientation, disability, or any other personal characteristic."

The four pillars of procedural justice to which many LEAs are committed—fairness, transparency, voice, and impartiality[98]—are not consistent with officer involvement with hate groups or military gangs. The LEA's mission or values statement should therefore commit every employee to ensuring that their behavior advances the department's mission and values in their private life as well as in their public role.[99]

Police leadership should back these commitments with forceful public statements whenever necessary. For example, after the January 6 attack on the Capitol, Houston Police Chief Art Acevedo told an incoming class of police trainees, "If anyone in this room right now believes that anyone needed to be in the Capitol building, you need to check out. You will not survive in this department with that mindset."[100] On January 8, the Oakland Police Department issued a statement declaring, "The values of the Oakland Police Department are clear: We will not tolerate any form of hate speech, any expression that supports hate speech, or any acts of subversion, whether in-person or on online platforms. ... Hate speech and offensive conduct will not be tolerated; there are clear policies and guidelines that govern this behavior. Whether on or off duty, employees of OPD are prohibited from affiliating with subversive groups, and they are prohibited from doing anything that brings disrepute to the Department and erodes the public's trust. Our policies reflect the values of the Department and any employee found to violate these policies will be held accountable. Any employee that violates these rules is subject to discipline, including termination."[101]

To convey a unanimous message, police leadership should aim to coordinate their value statements with union leadership, where possible. Unlike some union leaders elsewhere,[102] union leaders in Houston and in the District of Columbia made public statements repudiating the insurrection of January 6 and declaring that participation in the attack should not be tolerated.[103]

LEAs should leave no doubt as to where they stand, and expressly affirm their commitment to racial justice and non-discrimination.

9 **Ensure that allegations of discriminatory misconduct are subject to rigorous investigation and, where substantiated, appropriate discipline, up to and including dismissal.** Where a department takes swift disciplinary action against people who support or engage in hate-group activity or paramilitary violence,[104] it sends a message that such actions will not be tolerated. By contrast, failure to hold officers accountable can send the opposite message.[105]

A number of reports indicate that Black officers in the Capitol Police and other LEAs had reported racist conduct and hate-group affiliations of their White colleagues, but their complaints were ignored or dismissed; some Black officers experienced retaliation for reporting.[106] Agencies should ensure that officers who report such concerns are not treated as though they (rather than their colleague's bigotry) are responsible for disrupting departmental harmony and morale. Racist, sexist, homophobic, or other discriminatory behavior by police officers, whether directed toward other officers or toward members of the public, harms the department's reputation for fairness and undermines community trust. Officers who engage in discrimination can also endanger the safety of non-White, non-male, and non-straight officers. For example, on January 6, when some officers appeared to assist the insurrectionists as they attacked the Capitol, many Black (and non-Black) officers were placed in grave physical danger.[107] As one Black police officer said after the January 6 attack, "Now you got to go to work ... and stand next to someone who you don't even know if they have your back."[108]

To ensure that this situation does not recur, LEAs' policies on discriminatory misconduct should therefore:

A **Prohibit profiling, discrimination, and harassment on the bases of race, gender, sexual orientation, gender identity, religion, disability, and other protected status.** The prohibition on discriminatory misconduct should apply to officers and department employees both on and off duty, and it should guarantee nondiscrimination not only toward the employee's colleagues, but also toward victims, witnesses, people under investigation, arrest, or detention, and all other persons.[109]

B **Ensure that the means and method for filing a complaint are readily accessible by members of the community.** The process by which a community member can file a complaint of discrimination or misconduct should be published on the departmental website. The main page of the department's website should contain a clearly labeled link to a "Misconduct Complaints" page describing the process and criteria for community members to report officer misconduct, and instructions about how, when, and to whom to submit a complaint. These instructions should provide a link to the department's misconduct reporting form. The Misconduct Complaints page should also link to the department's policy manual so that departmental policies are accessible to members of the public, and members of the public can assess whether the behavior they experienced conformed to departmental rules.

C **Impose a duty on officers, including supervising officers, to report discriminatory misconduct.** As Brennan Center for Justice advocate Michael German observes, "Officers know" which of their colleagues are involved with hate groups and paramilitary gangs, but they "tend to protect each other."[110] IACP recommends, in general, that officers "have a duty to report any misconduct of which they become aware and shall notify a supervisor as soon as possible when another member of the agency is violating law or policy."[111] To reaffirm the department's commitment to investigating allegations of discrimination and to reassure officers that reports of discrimination will not be treated as threats to departmental reputation or cohesiveness, the anti-discrimination provisions of the policy manual should include an explicit duty upon all officers, and especially upon supervising officers, to report incidents of discrimination.[112] LEA leadership should ensure that the duty to report is not used to sanction officers or other employees who delayed reporting discriminatory misconduct because they feared retaliation (see paragraph (e), below).

D **Reinforce the duty to report discriminatory misconduct through affirmative verbal encouragement by leadership.** Officers and employees who raise concerns about a colleague's bigotry may worry that they, rather than the racist colleague, will be blamed for disrupting unit cohesion and morale. LEA leadership can set a tone that clarifies the department's view on reporting colleagues' association with hate groups or paramilitary gangs. In February 2021, in Houston, after the police chief repeatedly and forcefully reminded cadets that they had a duty to report any officer with extremist sympathies,[113] "a cadet who bragged about belonging to the Aryan Brotherhood, a neo-Nazi criminal gang, was reported by a fellow cadet and dismissed."[114]

E **Prohibit retaliation against those who report discriminatory misconduct, and ensure that the anti-retaliation provisions are enforced.** Ensure that the policy defines retaliation as a form of discriminatory misconduct, ensure that such misconduct is investigated, and ensure that those who commit such misconduct are held accountable.

F **Require mandatory investigation of every allegation of discriminatory misconduct,** whether lodged by an officer, a supervisor, an unsworn employee, a member of the public, a person under investigation or arrest, or any other complainant.[115] The investigation requirement should not be subject to any threshold determination that the complaint be deemed "reasonable" or "serious" prior to the investigation. While some complaints may be false or frivolous, it is unlikely that that can be determined with certainty without any investigation at all. Even an allegation that may seem minor, such as a rudeness complaint, may illuminate a pattern of troublesome behavior that may alert investigators and supervisors to a need for early intervention before more serious misconduct occurs (see Recommendation 9(h), below).

G **Impose rigorous investigative and adjudication procedures for discrimination complaints, outside the chain of command.** Boston PD, for example, imposes a detailed set of obligations to report and "proactively and reactively" investigate allegations of corruption, to assist with anti-corruption investigations, and to establish investigation and adjudication procedures which are separate from the chain of command.[116] In addition to ensuring accountability, the adoption of a similar process for discrimination allegations would send a powerful signal that discrimination will not be tolerated by the department.

H **Establish thresholds for early intervention.** If an officer is the subject of multiple complaints—even if the incidents are minor or are not found to warrant formal disciplinary consequences—the frequency of such complaints may alert the department to a need for early intervention to provide guidance and training on appropriate interactions with colleagues, the public, victims, witnesses, and persons under investigation, arrest, or detention. Similarly, a direct supervisor who observes a subordinate's inequitable or unduly confrontational interactions may be able to identify a need for "additional training, counseling, or other corrective action"[117] before a problem becomes severe.

As the IACP points out, first-level supervisors who observe their officers' interactions are probably in the best position to monitor violations of departmental anti-discrimination policies.[118] First-level supervisors should be trained and required to monitor and evaluate officers' performance, and to reinforce and evaluate officers' "conformance with the agency's standards of conduct and operational procedures."[119] Such supervisors, the IACP recommends, should be trained to "remain alert to any indications of behavioral, physical, or other problems that may affect an officer's job performance as well as any behaviors that may suggest conduct that is inconsistent with agency policy, procedures, and rules. Where observed, any information of this type that is deemed relevant should be documented immediately."[120] Failure to report discriminatory misconduct of which an officer or employee is aware should be subject to heightened penalties when the person who failed to report was a direct supervisor of the person who committed the misconduct.

More equitable hiring can lead to more just and effective policing.

10 **Review and implement recruitment and hiring processes to ensure that they are fair, equitable, and will yield a work force that can connect with all communities served by the department.** Law enforcement hiring should always be fair and nondiscriminatory. More equitable hiring can also lead to more just and effective policing: recent studies indicate that Black and Latinx officers (of all genders) conduct fewer stops and use less force upon people than their White counterparts do, and women officers (of all racial groups) use force less frequently than men officers do.[121] A department in which women are well represented as officers is one in which fewer officers will have a history of committing violence in intimate and family relationships, a red flag for their temperamental suitability for police work. Furthermore, the better represented Black, Brown, Native, women, and LGBTQ+ people are in a department, the less likely it is that a critical mass of officers will endorse racist, sexist, or homophobic views.

LEAs should review their recruitment and hiring processes to ensure that these processes value the experiences and character traits that can suit a candidate to twenty-first century policing in diverse communities. If the goal is to achieve a police department which is not militarized, police departments should seek candidates whose backgrounds are in fields that develop the ability to navigate complex and challenging social interactions such as those that police officers may face every day. Such fields might include social work, education, counseling, health care, waiting tables, bartending, emergency response, customer service, and home care. Departmental hiring efforts should emphasize college and university programs in these fields, as well as community houses of worship and advocacy organizations for causes (such as racial justice, gender equality, LGBTQ+ rights, disability rights, and so on) that are important to the communities served by police.

On the other hand, some conventional recruitment strategies, such as veteran preferences and advertising that emphasizes SWAT teams, fast vehicles, and weapons, may tend to attract candidates whose vision of policing may be unsuitably confrontational. LEAs should seek officers who want to serve and protect communities, not make war upon them. Other common screening tools, such as credit checks, physical fitness tests, and history of minor drug use or minor youthful offending could disqualify otherwise-suitable candidates who may have perspectives and experiences that enable them to relate especially well to the communities they police. Similarly, an otherwise-suitable candidate who falls slightly short of physical fitness requirements should be offered a chance to achieve greater fitness by training. Departments may find that it is easier to improve a candidate's borderline physical fitness than to change a candidate's unsuitable views or values.

Statewide rulemaking

11 **State Peace Officer Standards and Training (POST) Commissions can support this guidance by taking the following steps:**

A **Adopt policies that require or encourage LEAs to take the steps recommended in this guidance;**

B **Screen candidates for police employment, or require LEAs to screen them, for hate group and paramilitary gang affiliations (see Recommendation 6, above);**

C **Decertify officers for hate-group or paramilitary-gang membership, if LEAs fail to remove them; and**

D **Maintain a searchable, public online database of law enforcement certification and decertification records.**[122]

In 2020, for example, the Connecticut Peace Officer Standards and Training Commission adopted a new condition for suspension, cancellation, or revocation of a peace officer's certification: "The officer has been held by a law enforcement unit ... to have engaged in conduct that undermines public confidence."[123] The Connecticut POSTC identifies categories of conduct that could undermine public confidence, including, among others, the following: intentional discriminatory conduct, which includes social media posts or other behaviors that "ridicule, malign, disparage, or otherwise express bias against any race, any religion, or any protected class of individuals";[124] workplace sexual harassment; racial profiling prohibited by state statute; and abuse of power to compel a person to engage in a sexual or intimate relationship.[125]

LEAs must work together with communities to understand the problems caused by hate groups and paramilitary groups in law enforcement, and to craft an appropriate institutional response.

Consulting with the community

12 **Partner with communities to identify local hate groups and paramilitary gangs that may raise particular concern, and to help monitor their activity and identify their members.** LEAs should conduct town halls, focus groups, online fora, and other outreach activities to partner with communities and advocacy organizations for the groups that are targeted by hate groups and paramilitary gangs, such as Black, Latinx, Asian, Jewish, Muslim, immigrant, and LGBTQ+ people, and people with disabilities. Because many members of hate groups and paramilitary gangs have histories of domestic and gender violence and are drawn into White supremacy through incel and "pick up artist" subcultures,[126] local women's shelters and domestic violence organizations may be able to help identify groups, individuals, and practices that raise particular concern. National organizations such as the Anti-Defamation League, the Southern Poverty Law Center, and the Brennan Center for Justice monitor hate groups nationwide and should be consulted as to which groups are the most active and dangerous locally. Community members and local advocates will be able to identify groups that have targeted them and advise about their activities. Community members and local and national advocates may be able to help LEAs monitor the activities of hate groups and paramilitary gangs and recognize the markers and symbols such groups use to identify themselves.

13 **Partner with communities to implement the policies and practices recommended in these guidelines.** LEAs must work together with communities to understand the problems caused by hate groups and paramilitary groups in law enforcement, and to craft an appropriate institutional response.

[1] Mike Giglio, *A Pro-Trump Militant Group Has Recruited Thousands of Police, Soldiers, and Veterans*, The Atlantic (Sep. 30, 2020), https://www.theatlantic.com/magazine/archive/2020/11/right-wing-militias-civil-war/616473/; Anti-Defamation League, *White Supremacists Embrace "Race War,"* (Jan. 8, 2021), https://www.adl.org/blog/white-supremacists-embrace-race-war (hereinafter "ADL, *Race War*") (noting that White supremacists "amass[s] arsenals of illegal weapons and explosives" and "aim to attack minority targets with the hope that such attacks would lead to retaliatory violence, creating a cycle of escalation that would ultimately lead to a 'race war'").

[2] *See, e.g.*, Christina Carrega et al., *Proud Boys leader arrested for allegedly burning Black Lives Matter banner at Black church*, CNN.com (Jan. 5, 2021), https://www.cnn.com/2021/01/04/politics/proud-boys-arrest-black-lives-matter-banner/index.html (Proud Boys leader Henry "Enrique" Tarrio arrested for burning a Black Lives Matter banner stolen from a Black church and with unlawful possession of high capacity firearm magazines; Tarrio boasted on a podcast and on social media that he had burned the banner).

[3] For example, the oath taken by police officers and other public servants in California not only commits sworn persons to "support and defend" the U.S. constitution, but requires them to explicitly disavow any advocacy of or membership in "any party or organization … that now advocates the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means." Calif. Const. Art. XX, § 3, https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=CONS&sectionNum=SEC.%203.&article=XX. See also New Orleans Police Department Operations Manual, ch.1:1, s.1, https://www.nola.gov/getattachment/NOPD/Policies/Chapter-1-1-1-Oath-of-Office-EFFECTIVE-10-22-17.pdf/; Houston Police Department General Orders 100-06, Oath of Office, s.5, https://www.houstontx.gov/police/general_orders/100/100-06%20Department%20Mission,%20Values,%20Ethics,%20and%20Guiding%20Principles.pdf.

[4] The Anti-Defamation League defines White supremacist ideology as follows: "[G]enerally speaking, White supremacists of whatever sort adhere to at least one of the following beliefs: 1) Whites should be dominant over people of other backgrounds; 2) Whites should live by themselves in a Whites-only society; 3) White people have their own 'culture' that is superior to other cultures; and 4) White people are genetically superior to other people. Anti-Semitism is also important for the majority of White supremacists, most of whom actually believe that Jews constitute a race of their own—a race with parasitic and evil roots." The Anti-Defamation League, With Hate in their Hearts: The State of White Supremacy in the United States, at 3 (2015) https://www.adl.org/media/9471/download (hereinafter "ADL, Hate in their Hearts"). The Southern Poverty Law Center observes: "White nationalists seek to return to an America that predates the implementation of the Civil Rights Act of 1964 and the Immigration and Nationality Act of 1965. Both landmark pieces of legislation are cited as the harbingers of White dispossession and so-called "White genocide" — the idea that Whites in the United States are being systematically replaced and destroyed. These racist aspirations are most commonly articulated as the desire to form a White ethnostate — a calculated idiom favored by White nationalists in order to obscure the inherent violence of such a radical project. Appeals for the White ethnostate are often disingenuously couched in proclamations of love for members of their own race, rather than hatred for others." Southern Poverty Law Center, White Nationalist (2020), https://www.splcenter.org/fighting-hate/extremist-files/ideology/white-nationalist (hereinafter "SPLC, White Nationalist").

[5] No bright-line distinction can be drawn between hate groups dedicated to White supremacy and paramilitary gangs dedicated to the overthrow of government. The objectives, values, and supporters of such organizations tend to overlap, and they often coordinate their violent actions. Some groups, such as the Proud Boys, Three Percenters, Boogaloo Boys, avowed neo-Nazis, the Ku Klux Klan, and other "White nationalist" or "alt-right" groups, explicitly dedicate their membership to White supremacy (or euphemisms for White supremacy, such as "love of the White race" or "Western chauvinism"). Other paramilitary gangs, such as the Oathkeepers and the armed groups led by anti-government terrorist Ammon Bundy, work closely with avowed White supremacist groups in preparation for a "civil war" in which they hope to overthrow elected governments. Giglio, above note 1; Southern Poverty Law Center, Hatewatch Staff, *Ammon Bundy Launches New Antigovernment organization that takes on coronavirus restrictions*, (Sept. 25, 2020), https://www.splcenter.org/hatewatch/2020/09/25/ammon-bundy-launches-new-antigovernment-organization-takes-coronavirus-restrictions. This guidance will not draw fine distinctions among such groups. Whether a group is dedicated to racism or seeks the violent overthrow of elected governments, or both, no police officer or LEA should support or affiliate with them.

[6] FBI Counterterrorism Division, White Supremacist Infiltration of Law Enforcement (2006), http://s3.documentcloud.org/documents/402521/doc-26-white-supremacist-infiltration.pdf (hereinafter "FBI, 2006"); Federal Bureau of Investigation, Counterterrorism Division, Counterterrorism Policy Directive and Policy Guide, April 1, 2015 (updated November 18, 2015), at 89, https://assets.documentcloud.org/documents/3423189/CT-Excerpt.pdf (hereinafter "FBI, 2015") (warning anti-terrorism investigators that domestic terrorists often have "active links" to law enforcement, and proposing tactics for ensuring that investigations of domestic terrorism do not come to the attention of local law enforcement); Federal Bureau of Investigation and Department of Homeland Security, Joint Intelligence Bulletin, White Supremacist Extremism Poses Persistent Threat of Lethal Violence, May 10, 2017, https://www.documentcloud.org/documents/3924852-White-Supremacist-Extremism-JIB.html, (hereinafter "FBI, 2017"). See also Michael German, Hidden in Plain Sight: Racism, White Supremacy, and Far-Right Militancy in Law Enforcement, Brennan Center for Justice (2020), https://www.brennancenter.org/our-work/research-reports/hidden-plain-sight-racism-white-supremacy-and-far-right-militancy-law (hereinafter "Brennan Center, 2020"); SPLC, White Nationalist, above note 4; ADL, Hate in their Hearts, above note 4.

[7] See Spencer S. Hsu and Rachel Weiner, *U.S. Alleges wider Oath Keepers conspiracy, adds more defendants in Jan. 6 riot*, Washington Post (Feb. 19, 2021), https://www.washingtonpost.com/local/legal-issues/oathkeepers-charged-capitol-riot/2021/02/19/ac41f692-72ce-11eb-b8a9-b9467510f0fe_story.html (noting that investigators had identified members of the Oath Keepers and Proud Boys as leaders of the Jan. 6 insurrection); David Shortell, Five people associated with Proud Boys arrested for Capitol riot conspiracy charges, CNN.com (Feb. 11, 2021), https://www.cnn.com/2021/02/11/politics/proud-boys-capitol-riot-arrest/index.html (five people affiliated with the Proud Boys charged with joint conspiracy in coordinating the Jan. 6 insurrection).

[8] Tom Jackman, *Police union says 140 officers injured in Capitol riot*, Washington Post (Jan. 27, 2021), https://www.washingtonpost.com/local/public-safety/police-union-says-140-officers-injured-in-capitol-riot/2021/01/27/6074362-60e2-41eb-9430-e7c77b5b0297_story.html.

[9] Id.

[10] Scottie Andrew, *How a lone Capitol Police officer lured rioters away from the Senate chambers*, CNN.com (Jan. 12, 2021), https://www.cnn.com/2021/01/12/us/capitol-police-eugene-goodman-riots-senate-chambers-trnd/index.html; Martin Austermuhle, *Meet Three D.C. Police Officers Who Fought For The U.S. Capitol*, NPR (Jan. 15, 2021), https://www.npr.org/local/305/2021/01/15/957244194/meet-three-d-c-police-officers-who-fought-for-the-u-s-capitol; Natalie Colarossi, D.C. Cop Pinned by Mob Says 'It Was My Pleasure to Crush a White Nationalist Insurrection', Newsweek (Jan. 16, 2021), https://www.newsweek.com/dc-cop-pinned-mob-says-it-was-my-pleasure-crush-white-nationalist-insurrection-1562144 (officer whom insurrectionists had crushed in a door said, "It was absolutely my pleasure to crush a White nationalist insurrection. … We'll do it as many times as it takes.").

[11] Todd Shields et al., *Capitol Police Left Open Path for Chaos to Take Deadly Turn*, Bloomberg (Jan. 7, 2021), https://www.bloomberg.com/news/articles/2021-01-07/capitol-police-fail-with-too-few-cops-to-hold-back-pro-trump-mob ; Stay Tuned podcast, "Policing the Capitol," Jan. 15, 2021 (Anne Milgram interviewing former police chiefs Scott Thompson and Charles Ramsey about police response to the January 6 attack on the Capitol), https://cafe.com/stay-tuned/policing-the-capitol-with-scott-thomson-charles-ramsey/; Kevin McCoy et al., *'We needed more support': Capitol Police officer speaks out on leadership letdown, lack of planning before insurrection*, USA Today (Feb. 9, 2021), https://www.usatoday.com/story/news/2021/02/09/capitol-riot-police-officer-says-leadership-left-force-unprepared/4442430001/.

[12] Neil MacFarquhar, *Police Forces Have Long Tried to Weed Out Extremists in the Ranks. Then Came the Capitol Riot*, New York Times (Feb. 16, 2021), https://www.nytimes.com/2021/02/16/us/police-extremists-capitol-riot.html (reporting that "at least 30" police officers attended the rally preceding the attack on the Capitol and are under investigation, and three have been arrested for breaching the Capitol); Jonathan Ben-Menachem, *The Cops At The Capitol*, The Appeal (Jan. 13, 2021), https://theappeal.org/the-cops-at-the-capitol/; Eric Westervelt, *Off-Duty Police Officers Investigated, Charged With Participating In Capitol Riot*, NPR (Jan. 15, 2021), https://www.npr.org/2021/01/15/956896923/police-officers-across-nation-face-federal-charges-for-involvement-in-capitol-ri; Josiah Bates, 'A Fireable Offense.' Law Enforce Agencies Grapple With Police Officers' Involvement In U.S. Capitol Riots, Time (Jan. 15, 2021), https://time.com/5929398/police-officers-involved-capitol-riots-charges/.

[13] @cevansavenger, Twitter (Jan. 6, 2021, 3:45 PM), https://twitter.com/cevansavenger/status/1346920924310867968 (embedded video shows police officers opening barricades to let crowd enter restricted area of the Capitol).

[14] Whitney Wild & Paul LeBlanc, *6 Capitol Police Officers Suspended; 29 Others Being Investigated for Alleged Roles in Riot*, CNN.com (Feb. 18, 2021), https://www.cnn.com/2021/02/18/politics/capitol-police-officers-suspended/index.html (officers investigated for, among other allegations, taking smiling selfies with insurrectionists and giving "directing [insurrectionists] around the Capitol building").

[15] 11 Alive (WXIA Atlanta Live) (Jan 6, 2021), https://www.youtube.com/watch?v=G9hjf03>gIA (showing Capitol police officers assisting attackers down the Capitol steps after police had regained control).

[16] Richard Cowan, *U.S. Capitol Police investigating role of 35 officers during January 6 riot*, Reuters (Feb. 19, 2021), https://www.reuters.com/article/us-usa-trump-capitol-police-idUSKBN2AJ243.

[17] See generally FBI (2006), above note 6; FBI (2015), above note 6; FBI (2017), above note 6; Brennan Center, 2020, above note 6.

[18] The Plain View Project, *About the Project*, https://www.plainviewproject.org/about.

[17] Chris Palmer et al., *Group catalogs racist, intolerant Facebook posts by hundreds of Philly police officers*, The Philadelphia Inquirer (June 1, 2019), https://www.inquirer.com/news/philadelphia/police-philadelphia-facebook-comments-racist-20190601.html.

[18] Minyvonne Burke, *13 Philadelphia police officers who made racist, offensive Facebook posts to be fired*, NBC News (July 18, 2019), https://www.nbcnews.com/news/us-news/13-philadelphia-police-officers-who-made-racist-offensive-facebook-posts-n1031341.

[21] See, e.g. Stella Cooper et al., *'I Am On Your Side': How the Police Gave Armed Groups a Pass in 2020*, New York Times (Nov. 2, 2020), https://www.nytimes.com/video/us/100000007424380/police-black-lives-matter-protests.html (hereinafter, "NYT video") at 5:13, showing a Virginia police chief shaking hands with a heavily armed Boogaloo protester who was carrying a large firearm and a full belt of heavy ammunition, and sharing a drink with him; at 2:55, noting that "the most common response we saw was a permissive attitude to armed groups"; at 5:30, showing a Michigan sheriff posing for photos with a member of an "unlawful paramilitary group" who was subsequently charged with material support for terrorism in the plan to kidnap and kill Governor Gretchen Whitmer, and giving an interview in which he claimed that the armed men "had a right to make a citizen's arrest"); 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 militia 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."); 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 militia "about patrolling [BLM] demonstrations").

[22] NYT video, id. at 3:55 and 4:42 showing uniformed police officers with Oathkeepers and Don't Tread on Me badges sewn onto his uniforms, in Yucaipa and Orange County, CA; id. at 4:17, showing a uniformed Chicago PD officer wearing a Three Percenters mask; NEW YORK STATE OFFICE OF THE ATTORNEY GENERAL, PRELIMINARY REPORT ON THE NEW YORK CITY POLICE DEPARTMENT'S RESPONSE TO THE PROTESTS FOLLOWING THE DEATH OF GEORGE FLOYD, 28 (2020), https://ag.ny.gov/sites/default/files/2020-nypd-report.pdf (hereinafter "NYSAG") (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 in New York City*, Daily Mail (June 1, 2020), https://www.dailymail.co.uk/news/article-8374797/NYPD-officer-flashes-White-power-hand-gesture-laughs-George-Floyd-protests.html.

[23] See, e.g. Faith E. Pinho, *Black woman describes terrifying attack by Trump mob in L.A.: 'I'm thinking I'm dead'*, Los Angeles Times (Jan. 8, 2021), https://www.latimes.com/california/story/2021-01-08/black-women-describes-terrifying-attack-by-trump-mob-in-l-a-Im-thinking-im-dead (showing Black woman being beaten and pepper-sprayed by racist demonstrators in front of LAPD officers who failed to intervene); NYT video, id. (at 0:10, showing Kyle Rittenhouse walking with his hands up after shooting three protesters, killing two, and police making no effort to apprehend him; at 4:55, showing right-wing protesters beating and tasing anti-racist protesters in Yucaipa while officers in a parked police car nearby did nothing to intervene).

[24] See, e.g. Adam Regan, *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-50de-9e70-326310588879.html (showing police giving water to armed far-right counter-protesters 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 right-wing self-styled militiaman had killed two BLM protesters, characterizing members of armed far-right groups as "civilians out to protect property and "exercise their constitutional right," and refusing to say whether he wanted armed vigilante groups to attend any more BLM protests); Colton, Armed Civilian Groups, above note 21; Arun Gupta, *Playing Cops: Militia Member Aids Police in Arresting Protester at Portland Alt-Right Rally*, The Intercept (June 8, 2017), https://theintercept.com/2017/06/08/portland-alt-right-militia-police-dhs-arrest-protester/; Nicolle Okoren, *The Birth of a Militia: how an armed group polices Black Lives Matter protests*, The Guardian (July 27, 2020), https://www.theguardian.com/us-news/2020/jul/27/utah-militia-armed-group-police-black-lives-matter-protests (police deny coordination with far-right militia, but both police and militia members tell BLM demonstrators and reporters that far-right militia are "the first people [who would] take a bullet" to protect them).

[25] See Colton, Armed Civilian Groups (In 2020 in Albuquerque, NM, local police enlisted a local group of mixed martial-arts fighters and a far-right militia to assist with "patrolling these [Black Lives Matter] demonstrations." An Albuquerque police officer posed for a video in which militiamen and martial-arts fighters 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." Meanwhile, a member of another right-wing armed group said his militia had "worked with police for many years now."); Regan, id. (showing a paramilitary gang member saying that local police had told his militia that they would "push [BLM protesters] down by you so you can deal with them, and then we're gonna leave," just before a fellow armed far-right group member shot three BLM protesters). See also Colton, Armed Civilian Groups, above note 21; Gupta, above note 24. See also MacFarquhar, above note 12 (an Oklahoma sheriff "form[ed] a civilian 'posse' to maintain order at public events, which his opponents considered a paramilitary organization," and is now under investigation for allegedly breaching the Capitol). When invited to assist police, paramilitary gang and hate group members have been observed using force upon protesters, pointing guns at them, helping police to handcuff them, and even shooting protesters: Regan, id.; Gupta, above note 24 (In 2017, DHS invited members of a paramilitary gang to keep order at an "alt-right rally" in Portland, OR, where far-right militia members were recorded tackling counter-demonstrators, kneeling on them, and helping police to handcuff them); Colton, Armed Civilian Groups. (In 2020 in Albuquerque, NM, police dispatchers were overheard describing "heavily armed friendlies" aiming guns at anti-racism protesters from rooftops).

[26] In June 2020, for example, in a jurisdiction where a paramilitary gang had been enlisted to help with crowd control, a member of a paramilitary gang confronted a group of protesters, assaulted two women, and shot one protester. 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. In August 2020, in Kenosha, WI, a member of a paramilitary gang shot three protesters in front of police, killing two, and was allowed to walk away without being arrested: Regan, above notes 24-25; Stahl, above note 24.

[27] See, e.g. NYT video, above note 21 at 2:01 (showing paramilitary gangs dressed in combat fatigues and bulletproof vests and carrying military-style weapons).

[28] See, e.g. Dominick Mastrangelo, *Officer on Capitol riot: "Is this America? They beat police officers with Blue Lives Matter flags,"* The Hill (Feb. 22, 2021) https://thehill.com/homenews/news/539833-officer-on-capitol-riot-Is-this-america-they-beat-police-officers-with-blue; Southern Poverty Law Center, *White Lives Matter* (last accessed March 19, 2021), https://www.splcenter.org/fighting-hate/extremist-files/group/white-lives-matter (noting that the Traditionalist Workers Party, a neo-Nazi group, hosted a "White Lives Matter/Blue Lives Matter" event in 2016).

[29] See, e.g. Janelle Griffith, *Police chief bans "Thin Blue Line" imagery, says it's been "co-opted" by extremists*, NBC News (Jan. 29, 2021), https://www.nbcnews.com/news/us-news/police-chief-bans-thin-blue-line-imagery-says-it-s-n1256217; Giglio, above note 1; Cord J. Whitaker, *The Secret Power of White Supremacy—and How Anti-Racists Can Take It Back*, Politico (Oct. 29, 2020), https://www.politico.com/news/magazine/2020/10/29/knighthood-white-supremacy-433569 (noting that white supremacist rhetoric claims to "defend" the police and White people against Black and anti-racist protesters).

[30] Giglio, above note 1; Kim Hjelmgaard, *Secret audio recordings detail how white supremacists seek recruits from military, police*, USA Today (Oct. 15, 2020), https://www.usatoday.com/story/news/2020/10/15/splc-releases-audio-how-neo-nazi-group-recruits-military-police/3661460001/ (quoting neo-Nazi leader saying he "favors recruiting members who have either served in the police or the military because of their experience with guns and/or combat expertise.").

[31] See, e.g. Emmanuel Felton, *Black Police Officers Describe the Racist Attacks They Faced as They Protected the Capitol*, Buzzfeed News (Jan. 9, 2021), https://www.buzzfeednews.com/article/emmanuelfelton/black-capitol-police-racism-mob; Aymann Ismail, *What I Saw Inside the Capitol Riot*, Slate (Jan. 7, 2021), https://slate.com/news-and-politics/2021/01/capitol-riot-photos-inside-trump.html.

[32] See, e.g. *House Impeachment Managers' Video Compilation of January 6 Attack on the U.S. Capitol*, C-Span (Feb. 9, 2021), https://www.c-span.org/video/?c4944572/house-impeachment-managers-video-compilation-january-6-attack-us-capitol (the impeachment video compilation); Mark Morales, *'Kill him with his own gun': Police describe facing the mob at the Capitol*, CNN.com (Jan. 15, 2021), https://www.cnn.com/2021/01/14/politics/police-officers-capitol-riot-hodges-fanone/index.html; Austermuhle, above note 10; Neil MacFarquhar, *Air Force Sergeant With Ties to Extremist Group Charged in Federal Officer's Death*, New York Times (June 16, 2020), https://www.nytimes.com/2020/06/16/us/steven-carrillo-air-force-boogaloo.html (Boogaloo-affiliated shooter charged with murder and attempted murder for shooting at police officers, killing one, at a Black Lives Matter demonstration; article also notes arrests of boogaloo-affiliated men in Nevada, Colorado, Texas, and Ohio for other plots to "ambush law enforcement"); Tom Tapp, *Armed Protesters Break Into Oregon State Capitol Building, Break Windows, Assault Journalists, Hit Police With Chemical Agent*, Deadline (Dec. 21, 2020), https://deadline.com/2020/12/armed-protesters-enter-oregon-state-capitol-building-assault-police-chemical-agent-1234660385/ (armed gangs sprayed a police officer with bear spray at the Oregon Capitol).

[33] Mastrangelo, above note 28; Jonathan Dienst & Doha Madani, *Retired NYPD cop charged in Capitol riot, accused of attacking officer with flagpole*, NBC News (Feb. 23, 2021), https://www.nbcnews.com/news/us-news/retired-nypd-cop-charged-capitol-riot-accused-attacking-officer-flag-n1258638.

[34] Dienst & Madani, id.

[35] See, e.g. FBI (2006), above note 6; Brennan Center, 2020, above note 6; Sam Levin, *White supremacists and militias have infiltrated police across the US, report says*, The Guardian (Aug. 27, 2020), https://www.theguardian.com/us-news/2020/aug/27/white-supremacists-militias-infiltrate-us-police-report; Maddy Crowell & Sylvia Varnham O'Regan, *Extremist cops: how US law enforcement is failing to police itself*, The Guardian (Dec. 13, 2019), https://www.theguardian.com/us-news/2019/dec/13/how-us-law-enforcement-is-failing-to-police-itself; Samantha Michaels, *An FBI Agent Went Undercover to Study White Supremacists. He's Now Speaking Out About Racist Police*, Mother Jones (Jan. 15, 2021), https://www.motherjones.com/crime-justice/2021/01/an-fbi-agent-went-undercover-to-study-white-supremacists-hes-now-speaking-out-about-racist-police/; Albert Samaha, *Some Black Officers Say Their Departments Ignored Their White Colleagues' Radicalization*, BuzzFeed News (Jan. 14, 2021), https://www.buzzfeednews.com/article/albertsamaha/black-officers-say-police-ignored-white-radicalization; Doggrell v. City of Anniston, 277 F.Supp.3d 1239 (N.D. Ala., 2017) (police leadership had known of employee's affiliation with the League of the South for years, and dismissed him only when his affiliation became public and caused community outrage).

[36] See 11 Alive, above note 15, and accompanying text.

[37] See notes 78-80, below, and accompanying text.

[38] See, e.g., Chip Mitchell, *Chicago Police Union President Defends Those Who Stormed The U.S. Capitol*, WBEZ Chicago (Jan. 7, 2021), https://www.wbez.org/stories/chicago-police-union-president-defends-those-who-stormed-us-capitol/6242fa80-3b33-4396-af05-a5f15f4ac740 (Chicago FOP president John Catanzara told WBEZ on January 7 that there was "obviously no violence" in the crowd that attacked the Capitol, that "there's no fights," and that they had not "destroy[ed] anything that was there", he also described those who attacked the Capitol as having a right to do so: "They're individuals. They get to do what they want. ... They're entitled to voice their frustration."); see also Stahl, above note 24 (Kenosha police chief refused to condemn hate groups and paramilitary gangs after Kyle Rittenhouse shot three anti-racist protesters, killing two).

[39] See note 3, above, and accompanying text.

[40] IACP, *Model Policy: Standards of Conduct* (2019), at 1 https://www.theiacp.org/sites/default/files/2020-06/Standards%20of%20Conduct%20June%202020.pdf (hereinafter "IACP, Model Policy").

[41] Austin PD, for example, forbids officers to become members of any group that "advocates the commission of acts of force or violence to deny others their rights under the Constitution of the United States," language which tracks the prohibitions of the *Civil Rights Act of 1870*, 41st Congress, Sess. 2, ch. 114, 16 Stat. 140, also known as the "Ku Klux Klan Act of 1870": Austin PD Prohibited Associations, 900.3.3(i)(f), http://www.austintexas.gov/sites/default/files/files/General%20Orders.pdf. See also Miami PD, s. 11.6.33.1, https://www.miami-police.org/DeptOrders/MPD_Departmental_Orders.pdf forbids officers and employees to "join, or be a member of, any organization or society that has as a purpose the overthrow of or interference with the established government, by force or illegal means"; New Orleans PD forbids involvement with paramilitary gangs, as follows: "4. ... commit, attempt to commit, aid in the commission of, or advocate, abet, advise, or teach by any means any person to commit, attempt to commit, or aid in the commission of any act intended to overthrow, destroy, or assist in the overthrow or destruction of the constitutional form of government in the United States, any State, or any political subdivision thereof, by revolution, force, violence, or other unlawful means. Members shall not be allied with any group of persons whose individual or collective actions or purpose of action is prohibited by this rule ..." https://www.nola.gov/getattachment/NOPD/Policies/Rule-5-Restricted-Activities-EFFECTIVE-11-13-16.pdf/?lang=en-US.

[42] See IACP, Model Policy, above note 40, s.III(B)(10)(e), at 4. For example, the NYPD Patrol Guide, Procedure No. 203-10, Prohibited Conduct, s.2(a), prohibits NYPD officers to "Knowingly associate with any person or organization ... a) Advocating hatred, oppression, or prejudice based on race, religion, gender, gender identity/expression, sexual orientation, or disability," Austin PD, id. 900.3.3(e) Prohibited Associations provides: "Employees will not knowingly associate with any person or organization which advocates hatred, prejudice, or oppression of any person or group or which disseminates such material."

[43] As noted above (note 3), the state of California requires every government employee, including police officers, to take an oath not only to support and defend the U.S. Constitution, but also to disavow advocacy of or membership in "any party or organization ... that now advocates the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means." The policy manuals of the Austin, Charleston, and Miami police departments explicitly prohibit participation in groups that aim to overthrow governments by violent or unconstitutional means. Charleston PD forbids officers to voluntarily associate with "any group or organization that advocates the overthrow of the United States government or the government of the State of South Carolina either through violence or other unconstitutional means," and further prohibits officers to "affiliate with or become a member of any group or organization that will in any way interfere with the performance of his or her duties." 17.49 PROHIBITED MEMBERSHIP, https://www.powerdms.com/public/CPD5/documents/599904. Austin PD forbids officers to join any group "which advocates the commission of acts of force or violence to deny others their rights under the Constitution of the United States or which seeks to alter the form of government of the United States by unconstitutional means." Austin PD, Id. note 41, s.900.3.3 PROHIBITED ASSOCIATIONS, http://www.austintexas.gov/sites/default/files/files/General%20Orders.pdf. Miami PD forbids officers to join "any organization or society that has as a purpose the overthrow of or interference with the established government, by force or illegal means." Miami PD, 11.6.33.1, https://www.miami-police.org/DeptOrders/MPD_Departmental_Orders.pdf. New Orleans PD forbids officers to engage in or "be allied with" any persons or group that aim to "overthrow, destroy, or assist in the overthrow or destruction of the constitutional form of government in the United States, any State, or any political subdivision thereof, by revolution, force, violence, or other unlawful means": New Orleans PD Policy Manual, Rule 5, Restricted Activities, s.4, "Subversive activities," https://www.nola.gov/getattachment/NOPD/Policies/Rule-5-Restricted-Activities-EFFECTIVE-11-13-16.pdf/?lang=en-US.

[44] IACP, *Standards of Conduct: Concepts & Issues*, (2019), at 9 https://www.theiacp.org/sites/default/files/2020-06/Standards%20of%20Conduct%20June%202020.pdf (hereinafter "IACP, Concepts & Issues"). See, e.g. NYPD Patrol Guide, Procedure No. 203-10, s.2(d), prohibits officers to "Knowingly associate with any person or organization ... (c) Reasonably believed to be engaged in, likely to engage in, or to have engaged in criminal activities." https://www1.nyc.gov/assets/ccrb/downloads/pdf/investigations_pdf/pg203-10-prohibited-public-contact.pdf.

[45] See, e.g. Austin PD, 900.3.3(2)(b), above note 41: "Employees will not establish social and/or business dealings with persons they know, or should know, are likely to adversely affect the employee's or Department's credibility." See also Charleston PD, 17.49 "Prohibited Membership," above note 43: "Nor will any officer affiliate with or become a member of any group or organization that will in any way interfere with the performance of his or her duties."

[46] IACP, Concepts & Issues, above note 44, at 8. See, e.g. Denver PD, https://www.denvergov.org/content/dam/denvergov/Portals/720/documents/OperationsManual/OMSBook/OM_Book.pdf; New Orleans PD Policy Manual, https://www.nola.gov/getattachment/NOPD/Policies/Rule-5-Restricted-Activities-EFFECTIVE-11-13-16.pdf/?lang=en-US.

[47] IACP, Model Policy, above note 40, s.10, at 4.

[48] Denver PD, RR-141.1, https://www.denvergov.org/content/dam/denvergov/Portals/720/documents/OperationsManual/OMSBook/OM_Book.pdf.

[49] The IACP notes that any affiliation of officers with such groups "has a significant debilitating effect on the reputation of officers and their law enforcement agency." IACP, Concepts & Issues, above note 44, at 9.

[50] Atlanta PD, Chapter 2, APD SOP 2010 Work Rules: 4.5.3(1) Improper Organizations, https://www.atlantapd.org/Home/ShowDocument?id=3463.

[51] Houston PD G.O. 200-08, "Association with Criminals and Others," https://www.houstontx.gov/police/general_orders/200/200-08%20Conduct%20and%20Authority.pdf.

[52] See Giglio, above note 1.

[53] See, e.g. Philip Marcelo, *Gang database made up mostly of young black, Latino men*, AP (July 30, 2019) https://apnews.com/article/dd5643e358c3456dbe14c16ade0371fd (Boston); City of Chicago Office of the Inspector General, *Review of the Chicago Police Department's "Gang Database"* (April 2019), https://igchicago.org/wp-content/uploads/2019/04/OIG-CPD-Gang-Database-Review.pdf; California Attorney General, *Attorney General's Annual Report on Calgang for 2018*, at 3 https://oag.ca.gov/sites/all/files/agweb/pdfs/calgang/ag-annual-report-calgang-2018.pdf; *National Youth Gang Survey Analysis*, National Gang Center, https://www.nationalgangcenter.gov/survey-analysis/demographics.

[54] LA Rev Stat § 15:1404.

[55] See, e.g. New Orleans PD, https://nola.gov/getattachment/NOPD/Policies/Chapter-43-6-Criminal-Street-Gangs-EFFECTIVE-5-13-18.pdf/.

[56] See notes 8-9, above, and accompanying text (describing the coordinated attack on the US Capitol on January 6, 2021 in which hate groups and paramilitary gangs killed one officer and injured 140 others); Holly Bailey, *Man linked to far-right "Boogaloo Bois" charged after allegedly shooting at police precinct during Floyd protests*, Washington Post (Oct. 23, 2020), https://www.washingtonpost.com/nation/2020/10/23/man-linked-far-right-boogaloo-bois-charged-after-allegedly-firing-ak-47-minneapolis-precinct/; Anti-Defamation League, Three Percenters (last accessed March 19, 2020) https://www.adl.org/resources/backgrounders/three-percenters; Katie Shepherd, *An officer was gunned down. The killer was a "boogaloo boy" using nearby peaceful protests as a cover, feds say*, Washington Post (June 17, 2020), https://www.washingtonpost.com/nation/2020/06/17/boogaloo-steven-carrillo/.

[57] Id. See also, e.g. Cassie Miller & IP Staff, At the End of the Trump Era, White Nationalists Increasingly Embrace Political Violence, Southern Poverty Law Center (Feb. 16, 2021), https://www.splcenter.org/news/2021/02/16/end-trump-era-White-nationalists-increasingly-embrace-political-violence.

[58] Garcetti v. Ceballos, 126 S.Ct. 1951 (2006).

[59] *Garcetti v. Ceballos*, id. 1960. The First Amendment "does not invest them with a right to perform their jobs however they see fit."

[60] Pickering v. Board of Education, 391 U.S. 563, 568 (1968); Connick v. Myers, 461 U.S. 138, 142 (1983).

[61] Oladeinde v. City of Birmingham, 230 F.3d 1275, 1293 (11th Cir. 2000).

[62] See, e.g. Thomas v. Whalen, 51 F.3d 1285, 1292 (6th Cir. 1995); Paulos v. Breier, 507 F.2d 1383, 1386 (7th Cir. 1974).

[63] *Pappas v. Giuliani*, 447.

[64] See, e.g. *Doggrell v. City of Anniston*, above note 35; Pappas v. Giuliani, 118 F.Supp.2d 433 (SDNY 2000); *McMullen v. Carson*, below note 65.

[65] See, e.g. McMullen v. Carson, 754 F.2d 936 (11th Cir. 1985) (noting that civilian employee who was an active member of the Ku Klux Klan had many Black colleagues, and that publication of his Klan affiliation undermined their trust and that of the local Black community); Doggrell, id. at 1259.

[66] See Vida B. Johnson, *KKK in the PD: White Supremacist Police and What to Do About It*, 23 Lewis & Clark L. Rev. 205, 234-238 (2019) (discussing the possibility that known racism by police officers may be *Brady* evidence that must be disclosed to the defense and used to impeach the witness officer at trial, and providing examples).

[67] See, e.g. *Doggrell v. City of Anniston*, above note 35 (upholding termination of an officer who had been a member of the League of the South since before he was employed as a police officer); McMullen v. Carson, 754 F.2d 936, 938, 940 (11th Cir. 1985) (upholding dismissal of clerical employee of police department who had publicly identified himself as a recruiter for the Ku Klux Klan and describing the Klan as "a violent, criminal, and racist organization" which is "antithetical to the enforcement of the laws by state officers"); Pappas v. Giuliani, above note 63 (upholding dismissal of officer who sent unsolicited racist mailings); Thomas v. Whalen, 51 F.3d 1285 (6th Cir. 1995) (upholding dismissal of officer who wore police insignia and identified himself as a police officer while giving public presentations on behalf of the National Rifle Association); Welcherding v. Riegel, 160 F.3d 1139 (7th Cir. 1998) (upholding dismissal of prison guard who stated on local newscast that a White supremacist rally would be held on his property). See generally, e.g. "Blue by Day and White by (K)night: Regulating the Political Affiliations of Law Enforcement and Military Personnel," 81 *Iowa Law Review* 1085 (1996); Johnson, above note 66.

[68] See, e.g. Alex Jones, *Hamilton police chief, patrolman asked to resign after body cam footage of Black Lives Matter protest surfaces*, WTVM (Jan. 29, 2021), https://www.wtvm.com/2021/01/29/hamilton-police-chief-patrolman-asked-resign-after-body-cam-black-lives-matter-protest-surfaces/; *NY Police Officer Suspended for Racist Remarks Caught on Camera Against Black People*, NBC New York (Nov. 13, 2020), https://www.nbcnewyork.com/news/local/ny-police-officer-suspended-for-racist-remarks-caught-on-camera-against-black-people/2724834/; Lucas Combos, Seattle Officer Fired After Investigation into Racist Remarks, Patch (Jan. 15, 2021), https://patch.com/washington/seattle/seattle-officer-fired-after-investigation-racist-remarks.

[69] NYSAG, above note 22, at 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-laughs-George-Floyd-protests.html.

[70] See, e.g. New Orleans PD, https://www.nola.gov/getattachment/NOPD/Policies/Rule-2-Moral-Conduct.pdf/?lang=en-US.

[71] Austin PD, Impartial Attitude and Courtesy, s.301.2, https://www.austintexas.gov/sites/default/files/files/Police/General_Orders.pdf.

[72] For example, the Minnesota Peace Officer Standards and Training Commission model policy on Professional Conduct of Peace Officers prohibits unbecoming conduct both on and off duty: https://dps.mn.gov/entity/post/model-policies-learning-objectives/Documents/Professional-Conduct-of-Peace-Officers-Model-Policy.pdf, section II.

[73] See, e.g. Houston PD: "All employees shall engage in behavior that is beyond ethical reproach and reflects the integrity of police professionals," Houston PD G.O. 100-06, s. 2., above note 3.

[74] Based on IACP, Model Policy, above note 40, s.III(B)(4), at 2. See also, e.g. Houston P.D., above note 51: "Employees are expected to exercise sound judgment at all times. Employees' behavior shall be limited to conduct that is reasonable and prudent. No employee shall commit any act on or off duty in an official or private capacity that may bring reproach, discredit, or embarrassment to the department."

[75] IACP, Concepts & Issues, above note 44, at 5.

[76] IACP, id.

[77] New Orleans PD Manual, ch.13.28, Personal Appearance Standards, "Purpose," https://www.nola.gov/getattachment/NOPD/Policies/Chapter-13-28-Personal-Appearance-Standards-EFFECTIVE-7-2-19.pdf/?lang=en-US.

[78] See Griffith, above note 29 (police chief of University of Wisconsin-Madison Police Department bans the on-duty display of "Thin Blue Line" imagery).

[79] See, e.g. Andy Matarrese, *Deputy fired over Proud Boys sweatshirt*, The Columbian (July 20, 2018), https://www.columbian.com/news/2018/jul/20/clark-county-sheriffs-deputy-fired-proud-boys-sweatshirt/ (officer fired for wearing and selling Proud Boys apparel); Carli Brosseau, *Cop's 'anti-government' tattoo raises questions about 'his ability to function,' NC police chief says*, The Sacramento Bee (Aug. 30, 2019), https://www.sacbee.com/news/nation-world/national/article217581265.html (Chapel Hill police officer photographed with Three Percenter tattoo); Christopher Hacker, *CPD Investigating After Officer Wore Extremist Militia Logo To Downtown Protest Saturday*, CBS Chicago (June 6, 2020), https://chicago.cbslocal.com/2020/06/08/cpd-investigating-after-officer-wore-extremist-militia-logo-to-downtown-protest-saturday/ (uniformed Chicago officer wore a mask with Three Percenter logo); Charles Davis, *A California cop who wore a far-right patch to a George Floyd protest won't be fired*, Business Insider (Sep. 1, 2020), https://www.businessinsider.com/cop-wore-far-right-patch-george-floyd-protest-not-fired-2020-8 (Orange County, CA officer will not be disciplined for wearing Oath Keeper and Three Percenter patches on his uniform); David Hernandez, *The thin blue line: The history behind the controversial police emblem*, The San Diego Union Tribune (July 6, 2020), https://www.sandiegouniontribune.com/news/public-safety/story/2020-07-06/the-thin-blue-line-the-complex-history-and-thoughts-behind-the-police-emblem (San Diego officers wearing Thin Blue Line patch); Leah Simpson, *Police station is banned from displaying 'divisive thin blue line' flag after complaints it's 'dismissive' of the Black Lives Matter movement*, Daily Mail (Nov. 3, 2019), https://www.dailymail.co.uk/news/article-7644683/Police-banned-displaying-blue-line-flag-dismissive-Black-Lives-Matter.html (Montgomery, MD police officers posing with Thin Blue Line flag); James Whitbrook, *As the Punisher Skull Re-Emerges on Cops in U.S. Protests, Marvel Comics Reckons With Its Imagery*, Gizmodo (June 5, 2020), https://io9.gizmodo.com/as-the-punisher-skull-re-emerges-on-cops-in-u-s-protes-1843911179 (showing Detroit officer wearing Punisher patch); Travis Clark, *Some people want Disney and Marvel to stop police officers from wearing the Punisher logo, but an entertainment lawyer says a lawsuit wouldn't be effective*, Business Insider (June 4, 2020), https://www.businessinsider.com/some-want-marvel-disney-crack-down-police-wearing-punisher-logo-2020-6 (police officers with Punisher patch).

[80] "The 'Thin Blue Line' flag ... is a sign of support for law enforcement but has also come to signal opposition to the racial justice movement and a symbol of white supremacy or support for the Blue Lives Matter cause." Griffith, above note 29. One police chief "said that the flag has been 'co-opted' by extremists with 'hateful ideologies' in the promotion of their views that 'run counter' to the department's 'core values' and that it impedes 'our efforts to build trust.'" Id.

[81] See, e.g. Hartford PD G.O. 2.09 Uniform Standards and Dress Code, s.B(6) (stating that no "pins or medallions" shall be worn on the uniform except as authorized in writing by the Chief of Police, and listing the pins and medallions that are permitted); s.(N) of the same regulation prohibits "cloth sewn badges" altogether.

[82] "A Philadelphia police officer photographed with what appeared to be a Nazi tattoo in 2016 was not fired partly because the department had no stated policy on such tattoos." MacFarquhar, above note 12 (noting that in 2019, the department adopted a prohibition on tattoos that advocate violence).

[83] Hilary Rau et al., *State Regulation of Policing: POST Commissions and Police Accountability*, U.C. Irvine L. Rev. (2021, forthcoming). See, for example, MacFarquhar, above note 12 (quoting Houston Police Chief Art Acevedo as saying that polygraph tests administered to police candidates, which until now had focused on drug use and criminal activity, "will be expanded to include anti-government views").

[84] Rau, id.

[85] Id.

[86] See, e.g. Rau id. Florida law defines "good moral character" to exclude any officer who "1) knowingly, willfully, and actively participates in an activity intended to benefit a hate group, as defined in statute; or 2) engages in discriminatory conduct that does not involve an expression of public concern and that would cause a reasonable person to believe that the officer cannot perform the duties of office in a fair and impartial manner." Florida Admin. R. 11B-27.0011.

[87] See, e.g. Houston PD G.O. 200-41, Employee Integrity and Verifications Program, https://www.houstontx.gov/police/general_orders/200/200-41%20Employee%20Integrity%20and%20Verifications%20Program.pdf.

[88] Houston PD, G.O. 200-41, Department Presence on Social Media and the Internet, s.3f https://www.houstontx.gov/police/general_orders/200/200-41%20Department%20Presence%20on%20Social%20Media%20and%20the%20Internet.pdf.

[89] Hartford PD, G.O. 3-01a(6), Use of Social Media by Department Personnel, https://www.powerdms.com/public/HARTPD/tree/documents/1526468.

[90] Houston G.O. 200-08, Conduct and Authority, s.I, https://www.houstontx.gov/police/general_orders/200/200-08%20Conduct%20and%20Authority.pdf.

[91] See, e.g. NYPD Patrol Guide, No. 203-32, https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/public-pguide1.pdf ; Hartford PD, G.O. 3-01a(11), Use of Social Media by Department Personnel, https://www.powerdms.com/public/HARTPD/documents/1526468.

[92] Hartford PD, id.

[93] Hartford PD, id.; see also NYPD Patrol Guide, No. 203-32, above note 91.

[94] See, e.g. Houston G.O. 100-06, s.3(b), above note 3; NYPD Patrol Guide, Department Procedure Prohibiting Racial Profiling and Race-Based Policing, Procedure No. 203-25, https://www1.nyc.gov/assets/nypd/downloads/pdf/public_information/public-pguide1.pdf; Charleston PD- 8.2 Primary and Functional Objectives (CALEA 1.2.9), https://www.powerdms.com/public/CPDS/documents/585441; Baltimore PD, https://www.baltimorepolice.org/317-fair-and-impartial-policing.

[95] See notes 10-37, above, and accompanying text.

[96] IACP, Concepts & Issues, above note 44, at 9.

[97] IACP, Model Policy, above note 40, s.III(B)(10)(e), at 4.

[98] COPS Office, *Organizational Change through Decision Making and Policy: A New Procedural Justice Course for Managers and Supervisors*, 8(4) Community Policing Dispatch (April 2015), https://cops.usdoj.gov/html/dispatch/04-2015/a_new_procedural_justice_course.asp.

[99] See, e.g. "the conduct of all employees shall be compatible with the stated mission, values, and ethics." Houston PD G.O. 100-06, s.2, above note 3.

[100] Wilson Wong, *Ex-Houston police officer charged in Capitol riot after FBI agents find deleted selfies on phone*, NBC News (Jan. 20, 2021), https://www.nbcnews.com/news/us-news/houston-police-officer-charged-capitol-riot-after-fbi-agents-find-n1254911.

[101] *OPD Denounces Hate Speech; Launches an Internal Investigation*, Oaklandca.gov (Jan. 8, 2021), https://www.oaklandca.gov/news/2021/opd-denounces-hate-speech-launches-an-internal-investigation.

[102] See note 38, above.

[103] Associated Press, *Houston Officer Resigns After Link to US Capitol Riot*, (Jan. 15, 2021), https://www.nbcdfw.com/news/local/texas-news/houston-officer-resigns-after-link-to-us-capitol-riot/2529275/ (Houston police union president Douglas Griffith said, "if the allegations are true it is very disheartening and should be handled as they handle anyone else involved in the incident."); Scott Wong (@scottwongDC), Twitter (Jan. 7, 2021, 5:43 PM), https://twitter.com/scottwongDC/status/1347312907902660608?s=20 (The president of the Capitol police union released a statement saying, "We have several protesters dead, multiple officers injured [one subsequently died of his injuries] and the symbol of our Democracy, the U.S. Capitol, desecrated. This should never have happened."). Along the same lines, in June 2020, Paul Kelly, the president of the San Jose Police Officers' Association, announced that the union would "not provide legal or financial support" to any officer who was charged with wrongdoing connected to a private Facebook group in which San Jose police officers had posted racist words and imagery urging violence against Black and Muslim people and plotting a violent attack upon a prominent Black activist. Jason Green & Robert Salonga, *San Jose Police officers' racist Facebook posts exposed by blogger*, The Mercury News (June 26, 2020), https://www.mercurynews.com/2020/06/26/san-jose-police-officers-racist-facebook-posts-exposed-by-blogger/

[104] Id. (When Houston police officer Tam Pham was identified as having participated in the attack on the U.S. Capitol on January 6, 2021, he was immediately placed on administrative leave and required to attend a disciplinary review hearing that Friday, January 15.); Notably, both he and the union president, Douglas Griffith, stated that participation in the attack on the Capitol should not be tolerated (see id.).

[105] See, e.g. Philadelphia Police Advisory Commission, *A Review of the Philadelphia Police Departments Response To The Plain View Project* (2020), https://www.phila.gov/media/20201015091951/PAC-Report-A-review-of-the-PPDs-Response-to-the-Plain-View-Project.pdf, at 15-19 (noting shortcomings in Philadelphia PD investigation of officers for racist and violent Facebook posts).

[106] See, e.g. Samalia, above note 35; Joshua Kaplan & Joaquin Sapien, *"No One Took Us Seriously": Black Cops Warned Against Racist Capitol Police Officers for Years*, ProPublica (Jan. 14, 2021), https://www.propublica.org/article/no-one-took-us-seriously-black-cops-warned-about-racist-capitol-police-officers-for-years.

[107] See, e.g. Emmanuel Felton, *Black Police Officers Describe The Racist Attacks They Faced As They Protected the Capital*, BuzzFeed News (Jan. 9, 2021), https://www.buzzfeednews.com/article/emmanuelfelton/black-capitol-police-racism-mob.

[108] Kaplan & Sapien, above note 106.

[109] See, e.g. Oakland PD Manual of Rules, s.314.04, p.19, https://powerdms.com/public/OAKLAND/tree/documents/463 (prohibiting "harassment and discrimination against members, employees, and persons on the bases of race, religion, national origin, marital status, age, sex, sexual orientation, ancestry, physical or mental disability, or medical condition")

[110] MacFarquhar, above note 12.

[111] IACP, Model Policy, above note 40, s.III(B)(6).

[112] See, e.g. Oakland Manual of Rules, above note 109, s.314.04, at 19, ("Any member or employee who has knowledge that another member or employee has engaged in harassment or discrimination or inappropriate conduct that violates the [the city bylaw prohibiting workplace discrimination and harassment] is strictly charged with reporting that conduct ..."); NOPD Operations Manual, ch.41.13, s.13, p.4, https://www.nola.gov/getattachment/NOPD/Policies/Bias-Free.pdf/ ("Every member of this Department ... is responsible for promptly reporting any known instances of bias-based policing to a supervisor before the end of the shift during which they become aware of the incident." Baltimore PD, https://www.powerdms.com/public/BALTIMOREMD/documents/51012, Rule 9, s.2- Internal Investigation and Reporting of Misconduct ("Members are required to report any acts of misconduct by a member including, but not limited to, discrimination, harassment, criminal conduct, misuse of or excessive force, corruption or misappropriation of property, dishonesty, or any other misconduct or activity detrimental to the operation of the Department ...").

[113] See note 100, above, and accompanying text.

[114] MacFarquhar, above note 12.