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Via Electronic Mail (community.ferguson@usdoj.gov)

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Jude J. Volek
U.S. Department of Justice,
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**RE: *United States v. City of Ferguson*, Case No. 4:16-cv-0180-CDP,
Cover Letter to Comments on Ferguson Police Department’s Draft
Policies in Response to First Amendment Activity**

Dear Mr. Carey and Mr. Volek:

On behalf of the NAACP Legal Defense and Educational Fund, Inc. (“LDF”) and the Ferguson Collaborative (“FC”), we appreciate the opportunity to review and comment on the Ferguson Police Department’s (“FPD”) draft General Orders: *Response to First Amendment Protected Activity—Right to Observe, Photograph and Audio or Video Record Police Activity*; *Response to First Amendment Protected Activity: Public Protests/Demonstrations*; and Appendix A, Dispersal Warning Form Policies (together, “First Amendment Activities Policies”).

Since its founding in 1940, LDF has used litigation, policy advocacy, community organizing and communications strategies to address police violence and unlawful policing practices at the national, state, and local levels, including work through its Policing Reform Campaign.¹ The Campaign has partnered with policymakers to advance unbiased and accountable policing practices in cities across the country. For the past six years, LDF has supported the policing reform advocacy efforts of activists and civil rights attorneys in Ferguson and St. Louis, MO.² The Ferguson Collaborative (FC) is a group of Ferguson, MO residents and concerned stakeholders who advocate for community input and participation in the implementation of the above-captioned federal consent decree between the U.S. Department of Justice (“DOJ”) and the City of Ferguson. FC

leads Ferguson-based efforts to eradicate racial inequality in Ferguson's elections, jails, courts, and of course, policing.³

Given the collective experience of LDF and FC, we understand how critical this moment is for FPD, in coordination with the DOJ and monitoring team, to institute bold and far-reaching policy changes that reform the culture and practices of FPD's policing model, while prioritizing community safety and transparency. It is against this backdrop that we provide the recommendations below to ensure FPD: 1) meets its obligation to protect the First Amendment right to peacefully assemble by banning militarized responses to demonstrations and limiting uses of force; 2) protects individuals' freedom of expression, assembly, and speech without retaliation through the use of discretionary arrests and charges; and 3) protects the privacy of individuals by banning the use of facial recognition and other biometric reader technology in its body-worn and in-car cameras. In addition to the comments below, we have attached detailed line edits to the First Amendment Activities Policies in Attachment A.

1. FPD Policies Must Underscore Its Obligation to Protect First Amendment Rights During Mass Demonstrations and Ban Militarized Responses and Unnecessary Use of Force

Over the past month, the nation has witnessed unprecedented sustained mass demonstrations as people protest the deaths of Black men and women at the hands of police in cities across the country,⁴ including protests in Ferguson.⁵ In response, peaceful protesters nationwide have been confronted with excessive use of force by police assigned to protect and serve them.⁶ Sadly, the FPD similarly has a history of using excessive force during mass demonstrations and arresting persons as retaliation for criticizing or recording police. The FPD's First Amendment Activities Policies must be revised to emphasize that officers are prohibited from interfering with a person's right to peacefully assemble and freedom of speech and expression through the use of force, militarized tactics, or use of discretionary arrests.

a. Require All Law Enforcement Response to Mass Demonstrations, Protests, or Other First Amendment Activity Be Coordinated and Demilitarized

In response to mass demonstrations protesting the police shooting death of Michael Brown, in 2014, police in Ferguson quickly became the face of a hyper-militarized police force. FPD officers approached peaceful protestors in war-like riot gear, furthering the divide between law enforcement and Ferguson's Black community.⁷ The use of paramilitary tactics and heavy weaponry heightened protest tensions, sparking fear, anger, and unrest.⁸

As the nation learned in 2014, these tactics are ineffective and further entrench officers in an “us vs. them” warrior mindset,⁹ rather than one of public service and community collaboration.

Additionally, during the 2014 demonstrations, FPD failed to adequately coordinate assistance it received from surrounding law enforcement agencies. FPD and other law enforcement agencies in St. Louis County follow a Code 1000 Plan, which is “a preplanned method of coordinating the mobilization and management of law enforcement personnel, equipment, and expertise during a local or countywide emergency situation.”¹⁰ FPD implemented this Plan ineffectively during the 2014 demonstrations as officers from various jurisdictions with varying levels of experience were dispatched to Ferguson with limited guidance on which agency was in command.¹¹ Consequently, at least three law enforcement agencies used varying tactics and strategies to manage the demonstrations.

Accordingly, we recommend the following amendments to the First Amendment Activities Policies:

- In addition to banning the use of rifle sights, FPD must also prohibit the use of military-style vehicles, such as mine-resistant ambush protected vehicles and long-range acoustics devices connected to armored vehicles, to disperse or otherwise control crowds.
- Prohibit officers from engaging in any police activity during a public protest or demonstration, including officers assigned to observe protestors, unless they have received appropriate training in de-escalation techniques, key concepts of the National Incident Management System command and management, including Incident Command Systems, multiagency coordination systems, and policing consistent with the First Amendment.
- FPD must require all other law enforcement agencies responding within Ferguson to ensure the same standards apply for their respective officers.¹²

b. Establish Clear Guidelines for Documenting and Using Force During First Amendment Activity

The 2014 Ferguson uprisings exposed significant officer use, or threatened use, of excessive force to manage crowds and protestors.¹³ Specifically, law enforcement’s use of tear gas to control large crowds was particularly controversial.¹⁴ When questioned about this use of force, FPD reported that it did not prepare an after-action report and therefore, could not definitively report regarding its use of force on protestors.¹⁵ In contrast,

residents and media reported numerous instances of excessive uses of force in Ferguson, often from different law enforcement agencies, and sometimes without warning residents.¹⁶ Additionally, because none of the law enforcement agencies that supported the FPD during the 2014 uprisings documented all use of force incidents,¹⁷ seemingly unlawful officer use of force went unaddressed. This resulted in unnecessary resident injury and contributed to the frequent chaos, lack of a designated source of officer command, and varying levels of officer-inflicted excessive force in response to demonstrators.¹⁸

To ensure the safety of all residents and officers, as well as accountability for all use of force incidents during protected First Amendment activity,¹⁹ we strongly recommend including the following requirements in the draft First Amendment Activities Policies:

- Establish a comprehensive method for documenting every officer use of force during First Amendment activity, including the reporting of threats of the use of force such as an officer pointing a firearm, taser, baton, or other weapons in the direction of protesters or demonstrators. The report/document must include notations regarding the deployment of tear gas and other less-lethal force instruments such as rubber bullets, Pepperballs, and Stingerballs, as well as the date, time and circumstance for each deployment. Furthermore, the documentation method should be simple, easy to understand, mandatory for all other law enforcement agencies that engage in Ferguson, and must outline procedures for force documentation even during dynamic and rapidly changing conditions.
- All commanders and supervisors should ensure the accurate documentation of all events, facts, and uses of force as soon as practicable after a use or force incident.
- Tear gas should be used in very limited circumstances and not as a general resource for crowd control.
- Officers will be disciplined for the force used in violation of federal, state, and local laws and FPD policies.

2. FPD’s First Amendment Activities Policies Must Protect Individuals’ Right to Free Speech and Expression and guard against Retaliation Through Discretionary Arrests and Charges

The DOJ’s 2015 Investigative Report of the FPD (“DOJ Report”) found that, despite clear constitutional law prohibiting police from arresting individuals for exercising their First Amendment right to criticize, record, observe, and speak out against police, “FPD arrest[ed] people for a variety of protected conduct: people [we]re punished for talking back to officers, recording public police activities, and lawfully protesting perceived injustices.”²⁰ Citing multiple examples,²¹ the DOJ Report shows how FPD officers used arrests and discretionary charges to retaliate against and intimidate residents engaging in lawful conduct, simply because the officer felt disrespected or frustrated.²² For example, the report found that

[i]n Ferguson...officers frequently make enforcement decisions based on what subjects say, or how they say it . . . [officers] are quick to overreact to challenges and verbal slights. These incidents—sometimes called ‘contempt of cop’ cases—are propelled by officers’ belief that arrest is an appropriate response to disrespect. *These arrests are typically charged as a Failure to Comply, Disorderly Conduct, Interference with Officer, or Resisting Arrest.*²³

Moreover, at large protests or demonstrations—even when peaceful—FPD’s use of discretionary arrests and charges increased significantly, with many officers unclear on which activities are protected under the First Amendment.²⁴ While these actions are largely inconsequential for officers, the victims are forced to maneuver the challenges of having an arrest and charges on their criminal record; time spent in jail away from family and employment; legal fines and fees; future barriers to housing, employment, and other resources; and an unnecessary exposure to the biases and corruption that plague the very system they sought to protest in the first place.²⁵ Coupling these hardships with FPD’s racially discriminatory practices make Black residents particularly vulnerable to being silenced, robbed of their First Amendment rights,²⁶ and wrongly pushed into Ferguson’s jail and court system.

Despite this, FPD’s draft First Amendment Activities Policies do not explicitly address officers’ use of arrests and discretionary charges to penalize or retaliate against individuals engaged in protected First Amendment activity. This grave omission ignores the DOJ report and FPD’s many documented violations of residents’ First Amendment rights,²⁷ places residents lawfully exercising First Amendment rights at the mercy of FPD and may have a chilling effect on residents’ freedom of expression.

To remedy this, FPD must implement bold measures in its policies that protect residents' First Amendment rights and ensure true officer accountability. Accordingly, we urge you to make the following changes to the First Amendment Activities Policies:

- In addition to requiring officers to seek supervisory approval before issuing a citation or arresting an individual for allegedly unlawful conduct, the draft policies should require officers to first utilize the least intrusive response—especially when addressing low-level offenses such as Manner of Walking Along Roadway, Failure to Comply, Disorderly Conduct, Interference with Officer, or Resisting Arrest. Specifically, the First Amendment Activities Policies must require officers to utilize verbal warnings and the issuance of citations over making arrests.
- Include a “Duty to Intervene” requirement for officers who witness fellow officers violating the law or FPD’s First Amendment Activities Policies and list the discipline officers will receive for failing to intervene.
- Include a rigorous data collection mechanism, listed directly in the First Amendment Activities Policies, that requires officers to report the number of arrests and discretionary charges connected to any First Amendment activity, including but not limited to: observing or recording officer conduct; criticizing or insulting officers; and yelling, disrespecting, or speaking obscenities at officers.
- State plainly that FPD’s prior use of “keep moving” orders or the “five-second rule,” which violated citizens’ right to assemble and free speech, as determined by a U.S. federal court injunction, unlawfully prohibit First Amendment activity and are not grounds for arrest.²⁸
- In keeping with the spirit and mandates of the consent decree,²⁹ ensure that the First Amendment Activities Policies and related trainings clarify definitions and actions referenced within the policies, to avoid subjective interpretations as much as possible, especially when an officer’s interpretation may be used to justify enforcement action. For example, we proposed adding a definition for Kettling, Safe Space, and Civil Disturbance.

3. FPD Must Include a Privacy Section in Its First Amendment Activities Policies That Prohibits the Use of Facial Recognition and Other Biometric Reading Technology

None of the First Amendment Activities Policies set parameters on how the FPD, and other law enforcement agencies it contracts with during protests, demonstrations, and marches, use Body Worn Video Recorders (“BWVR”) and In-Car Video Camera (“ICVC”) recordings of constitutionally protected activity. Because FPD’s body camera

policy allows officers to activate their BWVRs and ICVCs during protected First Amendment activity, the First Amendment Activities Policies must acknowledge and address the significant privacy concerns that arise when technology is coupled with police activity.³⁰

Intended as a police accountability tool, police body and car cameras collect countless datasets of private information. This is especially true when a large group of individuals gather in one area to exercise their First Amendment rights through protests, marches, and demonstrations.³¹ While FPD's policy requires officers to turn on body-worn cameras when they are engaging in law enforcement activities, these cameras must not be equipped with facial recognition technology and other biometric readers used to identify the participants, which would chill First Amendment participation and set a dangerous precedent.³² Such use would allow for the collection and tracking of faceprints captured without individuals' knowledge or permission, massively expanding law enforcement's reach into the lives, locations, and identities of vulnerable residents—often, as they protest law enforcement.³³

These concerns are exacerbated when coupled with racially discriminatory police practices, and the biases that frequently cause these technologies to misidentify individuals from communities of color.³⁴ Put differently, facial recognition technology has generally had a disparate impact on communities of color as it often misidentifies non-white individuals.³⁵ Combining this and the FPD's history of racially-biased policing dramatically increases the likelihood of constitutional violations, and prioritizes unfettered mass police surveillance over resident privacy and protection of First Amendment activity.

Furthermore, many jurisdictions and technology companies across the country³⁶ have recently banned law enforcement use of facial recognition and biometric reader³⁷ technology. We therefore strongly urge FPD to create a Privacy section in all of the First Amendment Activities Policies which includes an absolute ban on the use of facial recognition technology or any other biometric reading or identifier in connection with any First Amendment activity.³⁸

Conclusion

FPD has a unique opportunity to lead the way in crafting its First Amendment Activities Policies that go beyond the largely ineffective status quo of piecemeal polic changes, and instead institute meaningful reform to its interaction with residents. We urge you to implement all suggested changes.

Thank you for considering these recommendations. If you have any questions, please contact Katurah Topps or Monique Dixon of LDF at 212-965-2200 or Felicia Pullman of the FC at pulliam.felicia@gmail.com.

Sincerely yours,

NAACP Legal Defense and
Educational Fund, Inc.

Ferguson Collaborative

cc: Ferguson Lead Monitor, Natasha Tidwell

¹ See THURGOOD MARSHALL INSTITUTE, POLICING REFORM CAMPAIGN, <https://tminstituteldf.org/advocacy/campaigns/policing-reform/about/> (last visited July 6, 2020).

² See NAACP LEGAL DEFENSE AND EDUCATIONAL FUND, FERGUSON IN FOCUS, [https://www.naacpldf.org/wp-content/uploads/Ferguson-in-Focus_4_Criminal-Justice .pdf](https://www.naacpldf.org/wp-content/uploads/Ferguson-in-Focus_4_Criminal-Justice.pdf); Letter from LDF to St. Louis Municipalities Addressing Lack of African American Representation on City Councils (Apr. 15, 2015), <https://www.naacpldf.org/press-release/ldf-submits-letter-to-st-louis-municipalities-addressing-lack-of-african-american-representation-on-city-councils>. For more information about LDF's work in Ferguson and St. Louis, please visit <https://tminstituteldf.org/ldf-action/fergusonst-louis-county-missouri/>.

³ For more information about the Ferguson Collaborative, please visit <http://fergusoncollaborative.org/>.

⁴ See, e.g., Alex Altman, *Why The Killing of George Floyd Sparked an American Uprising*, TIME (June 4, 2020), <https://time.com/5847967/george-floyd-protests-trump/>; Dylan Lovan, *Impatience Grows for Cops' Arrest in Breonna Taylor's Death*, AP NEWS (June 25, 2020), <https://apnews.com/bb0b2c8e4e10b35421fd70f5fc5fb9c6>; Kari Paul et al., *Black Lives Matter Protests: Atlanta Shooting of Rayshard Brooks Declared Homicide – As It Happened*, THE GUARDIAN (June 15, 2020), <https://www.theguardian.com/us-news/live/2020/jun/15/rayshard-brooks-black-lives-matter-george-floyd-donald-trump-live-updates>.

⁵ See Michelle Munz et al., *Peaceful Day of Protests Turns Violent at Night as Ferguson is Damaged*, ST. LOUIS POST-DISPATCH (May 31, 2020), https://www.stltoday.com/news/local/crime-and-courts/peaceful-day-of-protests-turns-violent-at-night-as-ferguson-is-damaged/article_547e9980-f6b1-5df9-852a-88ae68833b84.html.

⁶ See Mark Berman & Emily Wax-Thibodeaux, *Police Keep Using Force Against Peaceful Protesters, Prompting Sustained Criticism about Tactics and Training*, WASH. POST (June 4, 2020), https://www.washingtonpost.com/national/police-keep-using-force-against-peaceful-protesters-prompting-sustained-criticism-about-tactics-and-training/2020/06/03/5d2f51d4-a5cf-11ea-bb20-ebf0921f3bbd_story.html; Shaila Dewan & Mike Baker, *Facing Protests Over Use of Force, Police Respond With More Force*, N.Y. TIMES (May 31, 2020), <https://www.nytimes.com/2020/05/31/us/police-tactics-floyd-protests.html>; Li Zhou, *"The Protesters Had to Deescalate the Police": Demonstrators Are the Ones Defusing Violence at Protests*, VOX (June 12, 2020), <https://www.vox.com/2020/6/12/21279619/protesters-police-violence-philadelphia-los-angeles-washington-dc>.

⁷ See U.S. DEP'T OF JUSTICE, OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, AFTER-ACTION ASSESSMENT OF THE POLICE RESPONSE TO THE AUGUST 2014 DEMONSTRATIONS IN FERGUSON, MISSOURI 55 (2015) [hereinafter POLICE RESPONSE IN FERGUSON], <https://www.policefoundation.org/wp-content/uploads/2018/08/After-Action-Assessment-of-the-Police-Response-to-the-August-2014-Demonstrations-in-Ferguson-Missouri.pdf> (“The deployment of the armored vehicles contributed to many in the community perceiving the police presence as a military-type response. It was clear the armored vehicles stirred the emotions of demonstrators—they expressed fear, anger, and intimidation by the vehicles’ mere presence.”).

⁸ See Paul Szoldra, *This is the Terrifying Result of the Militarization of Police*, BUSINESS INSIDER (Aug. 12, 2014), <https://www.businessinsider.com/police-militarization-ferguson-2014-8>; see also POLICE RESPONSE IN FERGUSON, *supra* note 7, at xvii.

⁹ POLICE RESPONSE IN FERGUSON, *supra* note 7, at 59 (noting that protestors viewed the police department’s deployment of militarized equipment, including camouflage coats and what appeared to be automatic weapons, and of the SWAT Team and CART unit as an adverse and militarized reaction to the protestors largely non-violent presence).

¹⁰ *Id.* at 32.

¹¹ *Id.* at 38-39.

¹² See Consent Decree at ¶ 122, *United States v. City of Ferguson*, No. 4:16-cv-000180-CDP, (E.D. Mo. 2016), <https://www.justice.gov/opa/file/833431/download>; see also LDF and FC’s Line Edits to the FPD Draft Policy Response to First Amendment Protected Activity: *Public Protests/Demonstrations*, at pages 8 and 10, listing sources that highlight the St. Ann Police Department’s discriminatory and unlawful practices. .

¹³ See U.S. DEP'T OF JUSTICE, CIVIL RIGHTS DIVISION, INVESTIGATION OF THE FERGUSON POLICE DEPARTMENT 80 (2015) [hereinafter DOJ Report], https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf (“Another concern we heard from many African-American residents, and saw in the files we reviewed, was of casual intimidation by FPD officers, including threats to draw or fire their weapons, often for seemingly little or no cause.”).

¹⁴ *Police Used Excessive Force to Quell Ferguson Unrest: Suit*, N.Y. POST (Aug. 29, 2014), <https://nypost.com/2014/08/29/police-used-excessive-force-to-quell-ferguson-unrest-suit/>; see also *Reports: Protesters, Including a Child, Hit by Tear Gas in Ferguson*, THE WEEK (Aug. 17, 2014) <http://theweek.com/speedreads/447988/reports-protesters-including-child-hit-bytear-gas-ferguson>.

¹⁵ POLICE RESPONSE IN FERGUSON, *supra* note 7, at 49-51 (noting that “[r]ecords on the deployment of tear gas were incomplete,” including “a lack of thorough documentation of the use of CS gas (tear gas), including justification, deployment strategy, and outcomes”).

¹⁶ See Terrence McCoy, *Amnesty International: Ferguson Police Committed Human Rights Abuses during Michael Brown Protests*, WASH. POST (Oct. 24, 2014), <https://www.washingtonpost.com/news/morning-mix/wp/2014/10/24/ferguson-police-committed-numerous-human-rights-abuses-amnesty-international-says/>; Jon Swaine, *Michael Brown Protests Met with Rubber Bullets and Teargas*, THE GUARDIAN (Aug. 14, 2014), <https://www.theguardian.com/world/2014/aug/14/ferguson-police-teargas-rubber-bullets-michael-brown>.

¹⁷ See POLICE RESPONSE IN FERGUSON, *supra* note 7, at 124.

¹⁸ See *id.*

¹⁹ See *id.* at 52 (“With more than 50 agencies responding to the mass demonstrations and based on interviews and reviews of media content, responding agencies, including those outside the scope of this assessment, used varying levels of force.”).

²⁰ DOJ Report, *supra* note 15, at 24.

²¹ *See id.* at 25-28. In one example, an officer reported that two teenaged girls were “play fighting” in an intersection after school; when one of the schoolgirls gave the middle finger to a white witness, the officer ordered her to come talk to him without her friend present. When the friend insisted on lawfully observing the officer’s conduct the officer arrested both girls, using force to execute the arrests. FPD officers then charged the girls with Disorderly Conduct for giving the middle finger and using obscenities; Manner of Walking for being in the Failure to Comply for staying to observe the officer interaction; Interference with Officer; Assault on a Law Enforcement Officer; and Endangering the Welfare of a Child (themselves and their schoolmates) by resisting arrest and being involved in disorderly conduct.

²² *Id.* at 27; *see also* POLICE RESPONSE IN FERGUSON, *supra* note 7, at xvii (“Discretionary application of sanctions by law enforcement is always a concern. The exposure to potential arrest for exercising one’s right to peacefully assemble and protest was problematic.”).

²³ DOJ Report, *supra* note 15, at 25 (emphasis added).

²⁴ *E.g.*, POLICE RESPONSE IN FERGUSON, *supra* note 7, at 38 (noting that police arrested over 300 people in 17 days).

²⁵ Margaret Love & David Schlüssel, Editorial, *Protesting Should Not Result in a Lifelong Criminal Record*, WASH. POST (June 14, 2020), <https://www.washingtonpost.com/opinions/2020/06/15/protesters-should-not-get-lifelong-criminal-record/>.

²⁶ For example, from 2011 to 2013, African Americans accounted for 95% of Manner of Walking in Roadway charges, and 94% of all Failure to Comply charges. DOJ Report, *supra* note 15, at 62.

²⁷ *See id.*; POLICE RESPONSE IN FERGUSON, *supra* note 7.

²⁸ *Abdullah v. City of St. Louis, Mo.*, 52 F. Supp. 3d 936 (E.D. Mo. 2014); *see also* POLICE RESPONSE IN FERGUSON, *supra* note 7, at 64 (describing the “keep moving order” as a police tactic where deployed officers near protesters and required officers tell protesters to “keep moving” within five seconds. If demonstrators failed to disperse, they would be arrested); Joel Currier, *Federal Judge Bars Police from Forcing Ferguson Protesters to ‘Keep Moving,’* ST. LOUIS POST-DISPATCH (Oct. 6, 2014), https://www.stltoday.com/news/local/crime-and-courts/federal-judge-bars-police-from-forcing-ferguson-protesters-to-keep-moving/article_4450191b-2430-5da7-ba40-daa55b735f4d.html.

²⁹ *E.g.*, Consent Decree, *supra* note 12, at ¶ 113.

³⁰ *See* U.S. DEP’T OF JUSTICE, OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, FINAL REPORT OF THE PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING 32 (2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf

³⁰ *See* U.S. DEP’T OF JUSTICE, OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, FINAL REPORT OF THE PRESIDENT’S TASK FORCE ON 21ST CENTURY POLICING 32 (2015), https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf.

³¹ *See* Adam Janofksy, *Lawmakers Set Their Sights on Facial Recognition*, WALL ST. J. (June 4, 2019), <https://www.wsj.com/articles/lawmakers-set-their-sights-on-facial-recognition-11559700360>; JAY STANLEY, ACLU, THE DAWN OF ROBERT SURVEILLANCE (2019), https://www.aclu.org/sites/default/files/field_document/061819-robot_surveillance.pdf.

³² *See* JENNIFER LYNCH, ELECTRONIC FRONTIER FOUNDATION, FACE OFF: LAW ENFORCEMENT USE OF FACE RECOGNITION TECHNOLOGY (2019).

³³ *Id.* at 2.

³⁴ Statement by NAACP Legal Defense and Educational Fund, Civil Rights Principles on Body Worn Cameras (May 2015), <https://www.naacpldf.org/wp-content/uploads/Civil-Rights-Principles-on-Body-Worn-Cameras.pdf>.

³⁵ *See* Joy Buolamwini & Timnit Gebru, *Gender Shades: Intersectional Accuracy Disparities in*

Commercial Gender Classification, 81 PROCEEDINGS OF MACHINE LEARNING RESEARCH 1, 2 (2018) (noting that “recognition systems have been shown to misidentify people of color, women, and young people at high rates”); Natasha Singer, *Amazon’s Facial Recognition Wrongly Identifies 28 Lawmakers, A.C.L.U. Says*, N.Y. TIMES (July 26, 2018), <https://www.nytimes.com/2018/07/26/technology/amazon-aclu-facial-recognition-congress.html> (noting that Amazon’s “Rekognition” system falsely identified 28 sitting members of Congress in a mug shot database, with members of color disproportionately misidentified).

³⁶ See BOSTON, MASS., CODE § 16-62 (June 24, 2020) (banning city use of face surveillance technology); S.F., CAL., ADMINISTRATIVE CODE §§ 19B.1-8 (banning use of facial recognition technology by all city departments); see also Jay Greene, *Microsoft Won’t Sell Police its Facial-recognition Technology, Following Similar Moves By Amazon and IBM*, WASH. POST (June 11, 2020), <https://www.washingtonpost.com/technology/2020/06/11/microsoft-facial-recognition/>; Shira Ovide, *A Case for Banning Facial Recognition*, N.Y. TIMES (June 9, 2020), <https://www.nytimes.com/2020/06/09/technology/facial-recognition-software.html>.

³⁷ See LYNCH, *supra* note 32, at 4 (explaining that facial recognition is only one type of biometric identification, and that other biometrics such as “iris scans, palm prints, voice prints, wrist veins, a person’s gait, and DNA are becoming increasingly common”).

³⁸ See Haley Samsel, *California Becomes Third State to Ban Facial Recognition Software in Police Body Cameras*, SECURITYTODAY.COM (Oct. 20, 2019), <https://securitytoday.com/articles/2019/10/10/california-to-become-third-state-to-ban-facial-recognition-software-in-police-body-cameras.aspx>.