



April 6, 2021

Mr. Paco Balderrama
Police Chief
Fresno Police Department
2323 Mariposa Street
Room 2075
Fresno, CA 93721

Dear City of Fresno Elected Officials and Fresno Police Chief Balderrama,

I am writing on behalf of the Lawyers' Committee for Civil Rights Under Law¹ as we are deeply concerned about serious reports of white supremacy within the ranks of the Fresno Police Department (PD). As widely reported, Fresno PD currently employs an officer associated with the Proud Boys and other male-chauvinist groups with ties to white nationalism² whose members regularly engage in violence. The Lawyers' Committee urges you to terminate Officer Rick Fitzgerald, commission an independent investigation into white supremacy within the ranks of Fresno PD, and implement the recommendations of the Fresno Commission for Police Reform to confront the longstanding harms of racially-biased policing. The Fresno PD Policy Manual states, "[w]hen [public] trust is eroded we are no longer effective as police officers."³ As explained below, the continued employment of Fitzgerald and others like him undermines the effectiveness of Fresno PD and strains its relationship with the community your officers have sworn to protect and serve.

I. Background

Fresno residents raised alarms concerning Officer Fitzgerald in mid-March 2021 after he was captured on video with Proud Boys at an anti-LGBTQ rally.⁴ The videographer, himself a

¹ The Lawyers' Committee, a nonpartisan and nonprofit organization, was formed in 1963 at the request of President John F. Kennedy to enlist the private bar's leadership in combatting discrimination and the resulting inequalities. The James Byrd Jr. Center to Stop Hate, at the Lawyers' Committee, supports communities and individuals targeted for hate and challenges white supremacy by using creative legal advocacy, disrupting systems that enable hate, and educating the general public and policy makers.

² *Proud Boys*, Southern Poverty Law Center <https://www.splcenter.org/fighting-hate/extremist-files/group/proud-boys> [hereinafter *SPLC*].

³ Fresno Police Dept., *Policy Manual* (July 17, 2020), available at https://www.fresno.gov/police/wp-content/uploads/sites/5/2020/08/PolicyManual_Redacted-Chap-1-to-3.pdf.

⁴ Rhuaridh Marr, *California cop under investigation after attending anti-LGBTQ Proud Boys rally*, Metro Weekly (Mar. 19, 2021) <https://www.metroweekly.com/2021/03/california-cop-under-investigation-after-attending-anti-lgbtq-proud-boys-rally/>.

prominent Central Valley member of the Proud Boys,⁵ identifies Fitzgerald as a police officer.⁶ Journalists and social media users quickly discovered Fitzgerald’s extensive association with the Proud Boys as well as his history of racist, violent rhetoric.⁷

As you likely know, the Proud Boys are an all-male extremist group with ties to white nationalism. The group regularly engages in violence against people and organizations that show support for racial and ethnic minorities, women, non-Christians, and immigrants. They have organized frequent rallies throughout the country and have appeared alongside other hate groups at violent gatherings such as the deadly “Unite the Right” rally in Charlottesville, Virginia in 2017.⁸ More than 20 individuals affiliated with the Proud Boys have been arrested so far in connection with the January 6 attack on the U.S. Capitol; the Department of Justice has indicated in court filings that as many as 40 other Proud Boys actively conspired in advance of January 6.⁹ The group is designated by the Southern Poverty Law Center as a hate group and by the Canadian government as a terrorist entity.¹⁰

Fitzgerald has publicly stated that he was a member of the Proud Boys for about a year, reaching the “third degree” and a leadership level of membership.¹¹ He was part of a large contingent of Proud Boys at a Sacramento “Stop the Steal” rally in November 2020, where he was pictured donning the group’s signature black and yellow colors¹² and appears to have stolen a counter-protestor’s flag.¹³ When it comes to white nationalism though, Fitzgerald does not discriminate: in an online video posted in the past few months, he encourages viewers to get involved in various far-right groups, citing the Proud Boys, the Three Percenters, Patriot Prayer, and his own Sons of ‘76 as viable options.¹⁴

⁵ Trone Dowd, *Cop Seen Attending Proud Boy Rally Sure Dresses Like a Proud Boy*, VICE (Mar. 15, 2021) <https://www.vice.com/en/article/wx8mnb/cop-seen-attending-proud-boy-rally-sure-dresses-like-a-proud-boy>.

⁶ Brianna Calix, *Fresno police officer placed on leave after seen with Proud Boys at Tower Theatre protest*, Fresno Bee (Mar. 15, 2021) <https://www.fresnobee.com/news/local/article249939048.html>.

⁷ See, e.g., *id.*

⁸ *SPLC*, *supra* note 2.

⁹ *There Were 60 Proud Boy “Boots On The Ground” on January 6; Around 23 Have Been Arrested*, EmptyWheel.net (Mar. 20, 2021) <https://www.emptywheel.net/2021/03/20/there-were-60-proud-boy-boots-on-the-ground-on-january-6-around-23-have-been-arrested/>; Nordean Biggs Rehl Donohoe Indictment, available at <https://www.justice.gov/usao-dc/case-multi-defendant/file/1377586/download>.

¹⁰ *SPLC*, *supra* note 2.

¹¹ Calix, *supra* note 6; Corin Hoggard, *Courtroom consequences? Fresno officer admits previous Proud Boys membership*, ABC30 Action News (Mar. 16, 2021), <https://abc30.com/fpd-proud-boys-fresno-officer-police-boy/10423826/>. Fitzgerald’s attorney also admits that his client has been a Proud Boy. *Id.* To achieve the third level of membership, a Proud Boy must (1) publicly declare that he is a Proud Boy and declare “I am a Western chauvinist, and I refuse to apologize for creating the modern world,” (2) endure a beating until he can yell the names of five breakfast cereals (in order to demonstrate “adrenaline control”) and limit his sexual activity, and (3) get a Proud Boys tattoo or other branding. *SPLC*, *supra* note 2.

¹² Dowd, *supra* note 5.

¹³ See Mar. 14, 2021 tweet from @Borwin10, <https://twitter.com/Borwin10/status/1371175704889466882>.

¹⁴ Calix, *supra* note 6 (video at 5:43). The Three Percenters are an anti-government extremist movement whose followers have advocated and glorified violence against their perceived enemies, including Black Lives Matter supporters and elected officials. See *Three Percenters*, Anti-Defamation League, <https://www.adl.org/resources/glossary-terms/three-percenters>. Patriot Prayer is a far-right group, often affiliated with Proud Boys, that frequently engages in violence against their political opponents. *What We Know About Patriot Prayer*, Southern Poverty Law Center, <https://www.splcenter.org/hatewatch/2020/08/31/what-we-know-about-patriot-prayer>.

While he continues to closely align with the Proud Boys, Fitzgerald recently formed a similar group of his own, “Sons of ’76.”¹⁵ The group describes itself as a “patriotic fraternity” and calls forward men to stand against the “progressive leftist agendas, antifa and community BLM activists who seek to destroy our free society.”¹⁶ This is especially concerning given that many of the aforementioned “community BLM activists” are Fresno residents whom Officer Fitzgerald swore an oath to protect.

Fitzgerald’s own social media and offline actions provide further grounds for concern. In a 2019 Instagram post, Fitzgerald shared a photo of himself wearing a “Punisher” mask and pointing a gun with the caption, “Shit is a lot easier when you can kill people.”¹⁷ Furthermore, a March 21 letter, signed by over 400 concerned Fresno residents, describes other concerning social media posts by Fitzgerald, including an image of bloody knuckles with the caption “Rough day at work.”¹⁸ The letter also alleges that Fitzgerald and others once tried to form a “White Officers Association” within the department.¹⁹

Promptly reacting to public outcry, Fresno PD placed Fitzgerald on paid administrative leave on March 14.²⁰ Both the Fresno County district attorney and the public defender are now investigating all cases involving Fitzgerald to determine the impact of his demonstrated biases.²¹ Fresno PD must now take the obvious next step and fire Fitzgerald.

II. Fresno Police Department Policies

Consistent with established legal precedent, the Fresno PD Policy Manual imposes discipline when a member’s off-duty conduct “is related to act(s) that may materially affect or arise from the member’s ability to perform official duties or to the extent that it may be indicative of unfitness for their position.”²² Policies that Officer Fitzgerald appears to have violated include, but are not limited to, the following:

- Policy 341.2.5(p): “Criminal, dishonest, infamous or notoriously disgraceful conduct adversely affecting the employee/employer relationship (on or off-duty)”;
- Policy 341.2.5(x): “Substantiated, active, continuing association on a personal, rather than official, basis with a person or persons who engage in or are continuing to engage in serious violations of state or federal laws, where the member has or reasonably should have knowledge of such criminal activities”;

¹⁵ Dowd, *supra* note 5.

¹⁶ “Welcome to the Sons of ’76, a patriotic fraternity!” Sons of ’76, <https://thesonsof76.com>; “Who are we?” Sons of ’76, <https://thesonsof76.com/f/who-are-we>.

¹⁷ Calix, *supra* note 6.

¹⁸ Letter to City of Fresno Elected Officials and Fresno Police Chief Balderrama, March 21, 2021.

¹⁹ *Id.*

²⁰ Fresno Police Department News Release (Mar. 14, 2021).

²¹ *Fresno Co. DA promises full investigation into Fresno officer’s alleged Proud Boys affiliation*, ABC30 Action News (Mar. 18, 2021) <https://abc30.com/fresno-police-officer-proud-boys-investigation-department-rick-fitzgerald/10428852/>; Corin Hoggard, ‘Huge credibility issues’: Fresno officer’s alleged Proud Boys connection investigated ABC30 Action News (Mar. 15, 2021) <https://abc30.com/fresno-police-proud-boys/10420542/>.

²² Fresno Police Dept., *Policy Manual* Policy 341.1.1 (July 17, 2020), https://www.fresno.gov/police/wp-content/uploads/sites/5/2020/08/PolicyManual_Redacted-Chap-1-to-3.pdf.

- Policy 341.2.5(s): “Substantiated, active, continuing association with or membership in “gang,” “organized crime” and/or “criminal syndicates” with knowledge thereof”;
- Policy 341.2.5(ab): “Any other on-duty or off-duty conduct which any member knows or reasonably should know is unbecoming a member of the Department or which is contrary to good order, efficiency or morale, or which tends to reflect unfavorably upon the Department or its members.”²³
- Code of Ethics: Each officer affirms that he will “keep [his] private life unsullied as an example to all” and “be exemplary in obeying the laws of the land and the regulations of my department.”²⁴

Fitzgerald’s off-duty conduct has been “notoriously disgraceful.” (§341.2.5(p)). His “substantiated, active, continuing association” with the Proud Boys, whose members have been charged with numerous federal crimes for attacking the Capitol, is “unbecoming” and “reflect[s] unfavorably upon the Department.” (§341.2.5(x), §341.2.5(s), and §341.2.5(ab)). A Fresno PD officer publicly identifying as a Proud Boy threatens “good order, efficiency,” and “morale.” (§341.2.5(ab)). Fitzgerald has shown, by word and deed, his appetite for violent confrontation toward his perceived political enemies, many of whom hail from historically marginalized communities already given ample reason to mistrust the police. In doing so, he has irreparably sullied his own reputation and made his continued employment by Fresno PD untenable.

III. White supremacy within the ranks of law enforcement destroys public trust and is not protected by the First Amendment

Fresno PD should not, and need not, give cover to white nationalism or violent vigilantism within its ranks. The First Amendment protects the rights to speak and associate freely and assemble peacefully, including as a Proud Boy, but not to serve the community as a police officer or other government employee. As the U.S. Supreme Court has recognized, the speech of public employees generally is protected only when employees speak on a matter of public concern *and* their speech does not risk interfering with the employer’s operations.²⁵ Even when public concern is relevant, the employee’s speech interest must be balanced against the State employer’s interest in “promoting the efficiency of the public services it performs through its employees.”²⁶ When speech and associational rights are intertwined, a public employee’s associational rights are subject to the same balancing test.²⁷

In determining that balance, the state employer’s interests are given particular weight in the area of law enforcement. Courts recognize that “police officials are entitled to impose more restrictions on speech than other public employers;” because of the special nature of police work, “discipline is demanded, and freedom must be correspondingly denied.”²⁸ Because policing

²³ *Id.*

²⁴ *Id.* at “Law Enforcement Code of Ethics.”

²⁵ See *Connick v. Myers*, 461 US 138 (1983).

²⁶ *Pickering v. Board of Education*, 391 U.S. 563 (1972).

²⁷ *Hudson v. Craven*, 403 F.3d 691, 698 (9th Cir. 2005).

²⁸ *Brickey v. Hall*, 828 F.3d 298, 304 (4th Cir. 2016) (quoting *Jurgensen*, 745 F.2d 868, 880 (4th Cir. 1984), see also *Cochran v. City of Los Angeles*, 222 F.3d 1195, 1201 (9th Cir. 2000) (“[d]iscipline and esprit de corps are vital to [a police department’s] functioning”), *Tindle v. Caudell*, 56 F.3d 966, 971 (8th Cir.1995) (“because police departments

requires extensive public contact, community trust, and close working relationships, courts grant wide deference to a department's judgment that an officer's actions erode public confidence.²⁹ An FBI Intelligence Assessment on white supremacist infiltration of law enforcement similarly notes that although the First Amendment protects an individual's right to express his or her opinions, the government can limit the employment opportunities of individuals "who hold sensitive public sector jobs, *including jobs within law enforcement*" when their expression would interfere with their duties.³⁰

The likely impact of the First Amendment activity, and how it may complicate the ability of both the individual employee and the law enforcement employer to perform their duties, is key.³¹ In Fresno and elsewhere, a police officer's badge is "a symbol of public faith" and "public trust."³² Courts often uphold decisions by a police department to fire an employee whose off-duty expression causes disruption to the office or undermines trust with the public.³³ In one illustrative case, the Seventh Circuit upheld the firing of a prison sergeant for associating with and promoting the Ku Klux Klan, including on a local newscast where he was identified as an employee at a state prison.³⁴ The state's interests in "maintaining safety and avoiding racial violence" outweighed the prison sergeant's speech and associational interests.³⁵ The court noted

function as paramilitary organizations charged with maintaining public safety and order, they are given more latitude in their decisions regarding discipline and personnel regulations than an ordinary government employer.").

²⁹ See, e.g., *Pappas* 290 F.3d at 147 (2d Cir. 2002) (recognizing a police officer's job quintessentially involves public contact, and holding the public's perception of officer's speech factors into whether it disrupts Government operations); see also *Dible v. City of Chandler*, 515 F.3d 918, 928 (9th Cir. 2008) ("The public expects officers to behave with a high level of propriety, and, unsurprisingly, is outraged when they do not do so."), *Locurto v. Giuliani*, 447 F.3d 159, 178–79 (2d Cir. 2006) (recognizing NYPD's legitimate interest in its public perception, and upholding termination of officer who engaged in "disruptive" expressive activities that could perpetuate widespread perception of NYPD officers as racist), and *Gasparinetti v. Kerr*, 568 F.2d 311, 315–16 (3rd Cir.1977), cert. denied, 436 U.S. 903 (1978) ("More so than the typical government employer, the Patrol has a significant government interest in regulating the speech activities of its officers in order "to promote efficiency, foster loyalty and obedience to superior officers, maintain morale, and instill public confidence in the law enforcement institution.").

³⁰ FBI Counterterrorism Division, *Intelligence Assessment: White Supremacist Infiltration of Law Enforcement* (Oct. 17, 2006), available at <https://assets.documentcloud.org/documents/3439212/FBI-White-Supremacist-Infiltration-of-Law.pdf> (emphasis added).

³¹ See, e.g., *Shepherd v. McGee*, 986 F. Supp. 2d 1211, 1218 (D. Or. 2013) (though plaintiff child protective services investigator characterized her social media posts insulting those receiving public assistance as "humorous and ironic," her comments would reasonably compromise her ability to be called as a witness and create trust issues with clients); see also *Brickey*, 828 F.3d at 305 (despite plaintiff officer's claim that he intended no harm in making certain comments about the police department, his comments could reasonably be interpreted as accusing the police chief of incompetence, therefore weighing against First Amendment protections).

³² See Fresno Police Dept., *Policy Manual* (July 17, 2020), available at https://www.fresno.gov/police/wp-content/uploads/sites/5/2020/08/PolicyManual_Redacted-Chap-1-to-3.pdf.

³³ See *Dible v. City of Chandler*, 515 F.3d 918, 926 (9th Cir. 2008) (police officer's effort to conceal his sexually explicit online activity was immaterial, and "it can be seriously asked whether a police officer can ever disassociate himself from his powerful public position sufficiently to make his speech (and other activities) entirely unrelated to that position in the eyes of the public and his superiors."), *Hernandez v. City of Phoenix*, 432 F. Supp. 3d 1049, 1064 (D. Ariz. 2020) (fallout from police officer's off-duty social media posts denigrating Muslims caused major disruption to police department's operations when phone lines were flooded and social media recruitment efforts were shuttered).

³⁴ *Weicherding v. Riegel*, 160 F.3d 1139, 1141, 1143 (7th Cir. 1998).

³⁵ *Id.* at 1143.

that a perception of tolerance of white supremacy would reflect on the entire staff, exacerbating racial tensions and mistrust of prison administrators.³⁶

Erosion of public trust is a particular concern in communities of color, where a history of violent and disrespectful interactions with police has bred mistrust, especially among Black people. Communities who lose trust in law enforcement are less likely to productively engage with police, which may obstruct the application of justice and make communities less safe.³⁷ When an officer affiliates with white nationalists, existing trust in law enforcement is further eroded.³⁸ Even the mere perception of police officers harboring racist or bigoted sentiment jeopardizes the integrity of law enforcement, endangers individual officers and community members alike, and deepens the divide between police officers and communities of color.³⁹

IV. The City must thoroughly reckon with issues of racism and bigotry within law enforcement to earn the trust of its residents

We have spoken with city residents and are concerned that Fitzgerald’s affiliation with white supremacist activity and groups undermines the entire department’s ability to maintain the public faith and is indicative of a widespread problem. Are Fresno’s religious minorities, LGBTQ residents, and communities of color able to trust and turn to their local law enforcement, when they know that at least one member of the force openly associates with groups advocating racial and political violence?

Fitzgerald has been an officer with Fresno PD for 19 years, a time that closely maps current Fresno Mayor Jerry Dyer’s tenure as Fresno Police Chief.⁴⁰ Several lawsuits filed against Fresno PD—and Dyer himself—during this period raise deeply troubling allegations of racism and sexism at all levels of the department.⁴¹ Community activists have been sounding the alarm for years. Without serious action following these latest revelations, the public will lack confidence that the City takes its commitment to serving and building trust with *all* residents seriously, particularly because Fresno PD had to be alerted to Fitzgerald’s brazen behavior. Fitzgerald’s termination must be followed by significant action to address underlying issues including: a

³⁶ *Id.*

³⁷ See Giffords Law Center, *In Pursuit of Peace: Building Police-Community Trust to Break the Cycle of Violence*; Department of Justice, *Importance of Police-Community Relationships and Resources for Further Reading*; Desmond et. al, *Police Violence and Citizen Crime Reporting in the Black Community*.

³⁸ See, e.g., Kenya Downs, *FBI Warned of White Supremacists in Law Enforcement 10 Years ago. Has Anything Changed?*, PBS (Oct. 21, 2016), <https://www.pbs.org/newshour/nation/fbi-white-supremacists-in-law-enforcement>.

³⁹ *Id.*; See Gifford’s Law Center, *In Pursuit of Peace: Building Police-Community Trust to Break the Cycle of Violence* (Jan. 2020), <https://lawcenter.giffords.org/wp-content/uploads/2020/01/Giffords-Law-Center-In-Pursuit-of-Peace.pdf> (finding lack of trust between police and communities is a major driver of national gun violence). See Department of Justice, *Importance of Police-Community Relationships and Resources for Further Reading*, <https://www.justice.gov/crs/file/836486/download> (emphasizing community trust in police is critical to public safety, and stating community trust depends on perceptions that police actions reflect community values). See Desmond, Matthew, Andrew V. Papachristos, and David S. Kirk, *Police Violence and Citizen Crime Reporting in the Black Community*, *Am. Soc. Rev.* 81.5 (2016) (finding that news of police abuses led to fewer 911 calls and diminished community safety).

⁴⁰ Hoggard, *supra* note 11; “About Mayor Dyer,” <https://www.fresno.gov/mayor/about-the-mayor/>.

⁴¹ Andrew Beale, *The Chief: The Remarkable — Sometimes Shocking — Career of Fresno’s Top Cop*, KQED (Mar. 29, 2019), <https://www.kqed.org/news/11736095/the-chief-the-remarkable-sometimes-shocking-career-of-fresno-top-cop>.

community forum about white supremacy in policing; a robust investigation by the California Attorney General's Office, an outside law firm, or other experienced outside entity; and the creation of a Civilian Oversight Board, among the dozens of worthwhile recommendations made by the recent Commission for Police Reform.⁴² It is incumbent that the City roots out and addresses white nationalism wherever it exists within the department's ranks. Investigation and inquiries must not stop when public outrage shifts to another issue. Fitzgerald's off-duty conduct is particularly well-documented and egregious; crucially, his actions should not set the bar for what warrants discipline.

Police departments across the country are addressing racist extremism and other highly offensive conduct and sentiment within their ranks, finally responding to decades of activism. For example, the Clark County, Washington Sheriff fired a deputy who was photographed wearing Proud Boys' clothing and advertising Proud Boys merchandise on social media.⁴³ The Wilmington, North Carolina police chief fired three officers after discovering footage of them exchanging racist and disparaging remarks.⁴⁴ The Fulton Police Department in New York terminated an officer after he posted a racist meme on social media.⁴⁵ A police dispatcher in New Jersey resigned after posting a racist comment about a Black child at a protest.⁴⁶ Law enforcement agencies across the country are investigating their ranks after dozens of current and former officers took part in the January 6 attack on the Capitol.⁴⁷

It is time for Fresno to act accordingly. We urge you to swiftly terminate Fitzgerald, seize the opportunity to undertake a broader investigation into white nationalism and racial bias within the ranks of Fresno PD, and meaningfully partner with residents to build a police department worthy of the public's trust. We are happy to meet with you to discuss the issue and assist you with this matter. You can reach our office by contacting Arusha Gordon, Associate Director of the James Byrd Jr. Center to Stop Hate at the Lawyers' Committee for Civil Rights, at byrdcenter@lawyerscommittee.org.

⁴² *Report and Recommendations*, Fresno Commission for Police Reform, <https://www.fresno-cpr.com/fresno-cpr-full-final-report>.

⁴³ Katie Shepherd, *Clark County Sheriff Deputy Fired After Wearing A Proud Boys Sweatshirt*, Willamette Week (July 20, 2018), <https://www.wweek.com/news/courts/2018/07/20/clark-county-sheriff-deputy-fired-after-wearing-a-proud-boys-sweatshirt/>.

⁴⁴ Jason Slotkin, *North Carolina Police Chief Fires Three Officers Over Racist Comments Caught On Tape*, NPR (June 25, 2020), <https://www.npr.org/sections/live-updates-protests-for-racial-justice/2020/06/25/883358818/wilmington-n-c-police-fires-three-officers-over-racist-comments-caught-on-tape>.

⁴⁵ Kassadee Paulo, *Fulton Police Officer Fired Following Social Media Post Investigation*, Oswego County Today (June 1, 2020), <https://oswegocountytoday.com/fulton-police-officer-fired-following-social-media-post-investigation/news/fulton/>.

⁴⁶ *'Inappropriate Post' About Protests Leaves BSCO Employee Without job*, WWAY News (June 3, 2020), <https://www.wwaytv3.com/2020/06/03/inappropriate-post-about-protests-leaves-bcso-employee-without-job/>.

⁴⁷ Martha Bellisle and Jake Bleibergus, *US police weigh officer discipline after rally, Capitol riot*, Assoc. Press (Jan. 24, 2021), <https://apnews.com/article/us-police-capitol-riot-980545361a10fff982676d42b79b84ab>; Bart Jansen, *'A nightmare scenario': Extremists in police ranks spark growing concern after Capitol riot*, USA Today (Mar. 21, 2021), <https://www.usatoday.com/in-depth/news/politics/elections/2021/03/21/police-charged-capitol-riot-reignite-concerns-racism-extremism/4738348001/>.

Sincerely,

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Lawyers' Committee for Civil Rights Under Law