

# **SPECIAL REPORT**



## **Occupational Safety and Health Concerns Arising Out of the Events of January 6, 2021**

**Office of the General Counsel  
Office of Congressional Workplace Rights**

**July 2, 2021**

**SPECIAL REPORT OF THE OCWR GENERAL COUNSEL  
ON THE OCCUPATIONAL SAFETY AND HEALTH CONCERNS  
ARISING OUT OF THE EVENTS OF JANUARY 6, 2021  
OCWR CASE NO. OSH 2021-01**

**Introduction**

When it was apparent that the events of January 6, 2021 resulted in the death and injury of USCP officers, we decided it was necessary to open this investigation. The video evidence of the attack on the U.S. Capitol depicted numerous USCP officers defending themselves and the Capitol with little in the way of personal protective equipment (PPE). Lack of PPE is often symptomatic of larger occupational safety and health (OSH) programmatic deficiencies, since providing PPE is the last step in an analytical process that includes a job hazard analysis (JHA) to identify potential hazards involved in specific job duties, the implementation of engineering and administrative controls to minimize the identified hazards, and then the use of PPE to minimize the risk posed by hazards that cannot be controlled by other means.<sup>1</sup>

To assist us in assessing and evaluating the adequacy of the JHAs and the hazard controls that were implemented, which involves considering the well-recognized hazards involved in policing and crowd control as well as the engineering, administrative, and PPE controls available to police departments, we hired Safir Intelligence and Security (SIS) to provide assistance. The team that SIS has assembled for this investigation is managed by Adam Safir and includes an impressive group of law enforcement professionals whose names and credentials include: Howard Safir (Commissioner, FDNY, NYPD and Director of Operations for the U.S. Marshals Service), Terry Gainer (USCP Chief and Senate Sergeant-at-Arms), Joe Dunne (Chief Security Officer, PAPD and 1st Deputy Police Commissioner, NYPD), William Morange (Chief of Police, Metropolitan Transit Authority (MTA)), Daniel Oates, Esq. (Head of Intelligence Division, NYPD; Chief of Police in Ann Arbor, Aurora and Miami Beach), and Nancy McGillivray (former U.S. Marshal for the District of Massachusetts). This team's members include individuals with expertise in PPE, weapons, officer training, research and planning, strategic budgeting and procurement, intelligence analysis and dissemination, Crime Prevention Through Environmental Design (CPTED), emergency medical response, and trauma recovery.

Like our internal investigative team, which consists of OCWR Occupational Safety and Health Specialists and our Deputy General Counsel, the SIS team members have reviewed all materials provided to us by the USCP, the publicly released video footage of the incident, the testimony and documents produced during the Congressional hearings in both the Senate and the House, the public versions of the reports issued by General Russell Honoré and USCP Inspector General (IG) Bolton, and the Staff Report issued jointly by the Senate Committee on Homeland Security and Governmental Affairs and the Senate Committee on Rules and Administration. Except where noted, this report is based solely on publicly released information. No security or

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<sup>1</sup> U.S. Dep't of Labor, Occupational Safety & Health Admin., *Job Hazard Analysis* (OSHA 3071 Rev. 2002), <https://www.osha.gov/sites/default/files/publications/osha3071.pdf>. For police officers involved in crowd control, the legal and authorized use of force might be necessary, which requires appropriate engineering methods and controls (such as weaponry and communications equipment) and administrative controls (such as training, communications, procedures, polices, appropriate incident command and control, etc.).

law enforcement sensitive information was reviewed and no security or law enforcement sensitive information is contained in this report.

On January 12, 2021, we notified the USCP that we would be opening this investigation. On this same date, we were forwarded an anonymous complaint concerning the events of January 6, which was originally filed with the OSHA office serving the Baltimore-Washington, D.C. area and which alleged that the USCP had failed to perform a JHA, failed to provide PPE to USCP officers, and failed to implement adequate crowd control measures. On February 17, 2021, we conducted an opening conference with the USCP and subsequently followed up with letters requesting information. We also obtained information from parties having information relevant to this investigation.<sup>2</sup>

The unprecedented events of January 6, 2021 have been succinctly described by the recently issued Staff Report summarizing the investigation jointly conducted by the Senate Committee on Homeland Security and Governmental Affairs and the Senate Committee on Rules and Administration:

On January 6, 2021, the world witnessed a violent and unprecedented attack on the U.S. Capitol, the Vice President, Members of Congress, and the democratic process. Rioters, attempting to disrupt the Joint Session of Congress, broke into the Capitol building, vandalized and stole property, and ransacked offices. They attacked members of law enforcement and threatened the safety and lives of our nation's elected leaders. Tragically, seven individuals, including three law enforcement officers, ultimately lost their lives.<sup>3</sup>

In addition to the tragic loss of lives, during the riot approximately 140 officers reported injuries. As described by the Senate Staff Report, the injuries and fatalities can be summarized as follows:

Approximately 140 law enforcement officers reported injuries suffered during the attack. The Capitol Police Labor Committee released a statement recounting some of the more serious injuries: "I have officers who were not issued helmets prior to the attack who have sustained brain injuries. One officer has two cracked ribs and two smashed spinal discs. One officer is going to lose his eye, and another was stabbed with a metal fence stake." Patrick Burke, executive director of the Washington, D.C. Police Foundation, reported that one officer suffered a heart attack after being attacked several times with a stun gun.

Three officers lost their lives following the attack. USCP Officer Brian Sicknick, a 13-year veteran and member of the First Responder Unit, was stationed on the West Front of

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<sup>2</sup> Because the USCP did not identify any witnesses until mid-June, we unable to interview all of them prior to the issuance of this report, which needed to be completed within six months of the event under the CAA. While the witnesses identified by the USCP should be able to provide us with information on the efforts being made to correct the deficiencies identified by the Task Force, the Senate Staff Report, and IG Bolton, the occupational safety and health deficiencies identified in this report have been conclusively established by the existing evidence.

<sup>3</sup> U.S. Senate, Committee on Homeland Security and Governmental Affairs and Committee on Rules and Administration, *Examining the U.S. Capitol Attack: A Review of the Security, Planning, and Response Failures on January 6*, Staff Report at 1 (June 8, 2021), <https://www.rules.senate.gov/imo/media/doc/Jan%206%20HSGAC%20Rules%20Report.pdf> ("Senate Staff Report").

the Capitol, where rioters attacked him with bear spray. Officer Sicknick passed away at 9:30 p.m. on January 7. Officer Howard Liebengood, a 16-year veteran of USCP, died on January 9. Officer Jeffrey Smith, a 12-year veteran of MPD, died on January 15.<sup>4</sup>

In response to our inquiry asking for information identifying the types and causes of injuries sustained by USCP officers during the riot, the USCP indicated (remarkably) that it “does not maintain a list of employees injured”<sup>5</sup> but it would be able to provide a summary of information obtained from worker’s compensation filings. The information eventually provided by the USCP indicated that, in addition to the fatalities, 80 officers reported injuries and that collectively those injuries were to fingers, arms, legs, backs, heads, faces, eyes, noses, lungs, hips, shoulders, wrists, groins, ankles, chests, and knees. These injuries not only inflicted pain and distress but included self-described concussions, contusions, bruises, chemical exposure and burns, breathing difficulties, and mental trauma.<sup>6</sup>

As indicated in the Senate Staff Report, USCP officers were poorly equipped to handle the events of January 6, 2021. Of the approximately 1,200 officers defending the Capitol on January 6, fewer than 300 were equipped with much in the way of protective equipment. The remaining 900 officers were dressed in their ordinary uniforms, with those stationed at security posts and around the security posts being equipped with batons and perhaps OC spray, also known as pepper spray. There were four “hard” CDU platoons activated. While it is still unclear exactly how many total officers in these platoons were present on January 6, the maximum number, including lieutenants, sergeants, and acting sergeants, is 271. The hard CDU platoons were equipped with additional equipment which included helmets, hardened plastic gear, and shields. However, the USCP IG found that some of this gear was defective or inaccessible to the hard CDU platoon members. As summarized by the Senate Staff Report, the USCP IG noted that:

USCP officers, for example, were given defective riot shields that had been improperly stored and, as a result, “shatter[ed] upon impact.” Not only was certain equipment defective, but USCP did not authorize CDU officers to wear the gear at the beginning of their shift. The CDU operational plan required that protective gear be “pre-stage[d]” in proximity to the platoons’ staging locations, and the CDU field commander would instruct officers to retrieve that gear “depending on the presence of counter-groups and the reported interactions between the opposing groups.” In at least once instance, USCP protective shields were locked in a bus during the riot so that a CDU platoon was unable to access them, and as a result, the platoon was required to respond to the crowd without the protection of their riot shields.”<sup>7</sup>

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<sup>4</sup> *Id.* at 19 (footnotes omitted).

<sup>5</sup> In its letter dated April 12, 2021 to the OCWR General Counsel (GC), the USCP explained that it does not maintain a list of injured employees because it is not required to do so by the provisions of the OSHAct incorporated into the Congressional Accountability Act (CAA). While it is true that the CAA does not grant the GC the authority to enforce the recordkeeping requirements promulgated under Section 8(c) of the OSHAct (29 U.S.C. § 657(c)) due to the limiting language in 2 U.S.C. § 1341(c)(1) (which does not include the authorities granted to the Secretary of Labor under Section 8(c)), there is nothing in the CAA explicitly exempting employing offices from these requirements. Regardless of whether it is legally required to do so, given the dangerousness of police work, it is difficult to see how the USCP can have a credible injury and illness prevention program without knowing and investigating the work-related injuries and illnesses sustained by its employees.

<sup>6</sup> The summary provided by USCP is so lacking in detail – particularly about the specific causes of the described injuries – as to make it impossible to determine precisely how each of these employees was injured.

<sup>7</sup> Senate Staff Report at 59 (footnotes omitted).

The evidence of lack of PPE and defective PPE is verified by the public statements made by USCP officers after the event. Many officers also reported that they did not receive sufficient information about the many hazards they faced on January 6. Communication shortcomings were evident, including inadequate radio equipment (probably due to lack of earpieces) and a failure to effectively communicate information (i.e., from a command center or dispatch center, or from one individual officer or supervisor on the scene to another). An officer must know what is going on and be able to receive clear orders and instructions in order to make informed and safe tactical decisions.

On June 15, 2021, the House of Representatives acknowledged the bravery and sacrifice of USCP officers when, with a vote of 406-21, it passed H.R. 3325 to award four Congressional Gold Medals to the United States Capitol Police and those who protected the U.S. Capitol on January 6, 2021. The bill is pending in the Senate.

### **The Importance of Occupational Safety and Health for the USCP**

The consensus of the SIS team is that the USCP must consider occupational safety and health concerns throughout its operations, not only for the protection of its officers, but for all who work for the United States Congress. OSH considerations are cross-cutting and include the development and implementation of education and training, equipment procurement, and facilities management, along with the strategic identification, assessment, and control of job hazards – all resulting in the mitigation and prevention of injuries.

As such, both for daily operations and for extraordinary events, the USCP and the organizations that work with it should ensure that OSH considerations are resourced and managed at the appropriate levels. This will enable meaningful and engaged participation by employees regarding OSH concerns, consistent safety education and training, and purposeful and practical approaches to preventing and mitigating trauma, including chronic physical and mental injuries.

In the practice of preparing for, responding to, and mitigating the impact of large-scale demonstrations, the USCP should integrate OSH considerations, tools, and resources into event planning processes and systems such as the National Incident Management System (NIMS) and for National Special Security Events (NSSEs)<sup>8</sup>.

### **The USCP's Legal Duties Under the OSHAct and the CAA**

Section 215(a)(1) of the CAA provides that each legislative branch employing office and each covered employee “shall comply with the provisions of section 5 of the Occupational Safety

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<sup>8</sup> SIS notes that the practice of “Resource Typing” in NIMS is one potential avenue to effectively integrate OSH considerations into event planning.

and Health Act of 1970.”<sup>9</sup> Section 5 of the OSHAct imposes two duties upon each employer: (1) the duty to “furnish to each of [its] employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to [its] employees”; and (2) the duty to “comply with occupational safety and health standards promulgated under this chapter.”<sup>10</sup> Consequently, “[a]ny standard ... properly imposed under the Act has the force of law because the Act imposes upon every employer the duty to ‘comply with occupational safety and health standards promulgated under [the OSHAct].’”<sup>11</sup>

OSHA has not promulgated standards specific to law enforcement. State and local police departments are not covered employers under the OSHAct, but many police departments are covered by state laws containing comparable provisions. Federal law enforcement agencies are covered by the OSHAct, but unlike the USCP, which is subject to enforcement under Sections 9 and 10,<sup>12</sup> these agencies are covered by Section 19,<sup>13</sup> which requires the establishment and maintenance of “an effective and comprehensive occupational safety and health program” consistent with the OSHA standards and provides for some reporting to OSHA and eventually to the President.

However, many of the job hazards faced by police officers are covered by the OSHA standards. Most pertinent to this investigation are the PPE standards, which include, among others: 29 C.F.R. § 1910.132(a) (requiring that protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, be provided, used, and maintained in a sanitary and reliable condition); 29 C.F.R. § 1910.132(d) (requiring that, for certain types of PPE including eye, head, hand, and foot protection, the employer conduct a hazard assessment); 29 C.F.R. § 1910.132(e) (prohibiting the use of defective or damaged personal protective equipment); 29 C.F.R. § 1910.133(a)(1) (requiring affected employees to use appropriate eye or face protection when exposed to eye or face hazards from flying particles, molten metal, liquid chemicals, acids or caustic liquids, chemical gases or vapors, or potentially injurious light radiation); 29 C.F.R. § 1910.134 (requiring respiratory protection when necessary to protect employee health); and 29 C.F.R. § 1910.135 (requiring use of helmets when there is a risk of injury to the head from falling objects).

The General Duty Clause is also applicable when insufficient action is taken to control recognized hazards that are not specifically covered by the OSHA standards. As noted earlier, under the General Duty Clause, the USCP must furnish to each of its employees “employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to [its] employees.” The recognized hazards associated with police work include the following:

- Violent attacks;
- Standing or sitting for long hours;

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<sup>9</sup> 2 U.S.C. 1341(a)(1).

<sup>10</sup> 29 U.S.C. § 654(a)(1)-(2); *Chao v. Mallard Bay Drilling, Inc.*, 534 U.S. 235, 240-41 (2002); *Whirlpool Corp. v. Marshall*, 445 U.S. 1, 12-13 (1980).

<sup>11</sup> *Asbestos Information Ass’n v. OSHA*, 727 F.2d 415, 417 (5th Cir. 1984).

<sup>12</sup> 29 U.S.C. §§ 658 & 659, incorporated into the CAA under Section 215(c)(2) (2 U.S.C. § 1341(c)(2)).

<sup>13</sup> 29 U.S.C. § 668.

- Exposure to contagious and infectious diseases from people, animals, needles, and other sources;
- Exposure to various chemical or biological hazards;
- Exposure to opioids or other substances;
- Pain from physical overexertion and prolonged or awkward body postures;
- Exposure to extreme working conditions, extreme temperatures, and UV radiation;
- Noise;
- Slips, trips, and falls;
- Fatigue from shift work;
- Psychological stress or trauma;
- Working alone;
- Risk of injury from the various locations to which police may be called, such as fire, explosion, unstable structures and surfaces, or falling objects, or working at heights or near traffic, water, confined spaces, large crowds, violent situations, etc.;
- Danger of driving at high speeds, often in difficult traffic or weather conditions; and
- Workplace violence or harassment, and harassment from the public.<sup>14</sup>

The recognized hazards specifically associated with crowd control activities include exposure to the following:

- Physical assaults;
- Verbal taunting and harassment;
- Projectiles of various sizes and shapes;
- Chemical sprays;
- Firearms;
- Handheld objects used as weapons, such as canes, umbrellas, flags, signs, and sticks;
- Pushing, stomping, trampling, and crushing;
- Opiates and other drugs;
- Contagious diseases; and
- Blood-borne pathogens.<sup>15</sup>

As indicated previously, to effectively control recognized hazards, an employer must generally perform a job hazard analysis to identify what hazards are present, inform employees of identified hazards, use engineering and administrative controls to minimize or eliminate those hazards, and if necessary, provide effective PPE to prevent serious injury or death from those hazards that cannot be eliminated.

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<sup>14</sup> See, e.g., CCOHS Police fact sheet,

[https://www.ccohs.ca/oshanswers/occup\\_workplace/police.html#:~:text=The%20hazards%20of%20police%20work%20include%3A%201%20Violent,prolonged%20or%20awkward%20body%20postures.%20More%20items...%0](https://www.ccohs.ca/oshanswers/occup_workplace/police.html#:~:text=The%20hazards%20of%20police%20work%20include%3A%201%20Violent,prolonged%20or%20awkward%20body%20postures.%20More%20items...%0).

<sup>15</sup> See Police Executive Research Forum, *The Police Response to Mass Demonstrations: Promising Practices and Lessons Learned*; <https://www.policeforum.org/assets/PoliceResponseMassDemonstrations.pdf> (“PERF Report”).

## Job Hazard Analysis (JHA)

A police department, like any employer, must know the hazards to which its employees will be exposed in order to adequately protect them.<sup>16</sup> The health and safety threats faced by police officers are constantly changing, so awareness and education about new safety and health threats and new equipment and methods to address those threats are key components of any safety and health program for police departments.<sup>17</sup> When it comes to policing large demonstrations, obtaining good intelligence about what the demonstrators are planning is essential.<sup>18</sup>

Many of the reports issued in the wake of January 6 have identified USCP deficiencies regarding the gathering and dissemination of intelligence information about the protestors and their plans for January 6.<sup>19</sup> It is clear from the statements of the officers and the USCP Labor Committee of the Fraternal Order of Police (FOP) that officers were not adequately briefed about the potential for violence or the plans to address such violence.<sup>20</sup> There is little doubt that both the inadequacy of the intelligence and the poor dissemination of the existing intelligence contributed to the chaos that the world witnessed.<sup>21</sup>

Adequate intelligence must focus not only on the threats posed to Congressional leaders and staff, but also on how these threats pose hazards to the safety and health of the police officers providing protection to Congress. There are typically three steps involved in developing a JHA: breaking the job down into successive steps or activities, identifying all hazards both existing and potential, and developing safe procedures to eliminate or reduce the risk of injury.<sup>22</sup> In a

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<sup>16</sup> Elizabeth Land Sanberg et al., *A Guide to Occupational Health and Safety for Law Enforcement Executives* at 12 (Sept. 2010), [https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/PERF\\_LE\\_OccHealth.pdf](https://bja.ojp.gov/sites/g/files/xyckuh186/files/Publications/PERF_LE_OccHealth.pdf) (“BJA/PERF Guide”).

<sup>17</sup> *Id.* at 14.

<sup>18</sup> *See, e.g.*, PERF Report at 20.

<sup>19</sup> Senate Staff Report at 36-53; Russell L. Honoré, et al., *Task Force 1-6: Capitol Security Review* at 2-3 (March 5, 2021), [https://www.documentcloud.org/documents/20507617-final\\_report\\_task\\_force\\_1-6\\_capitol\\_security\\_review\\_short](https://www.documentcloud.org/documents/20507617-final_report_task_force_1-6_capitol_security_review_short) (“Task Force Report”); U.S. Capitol Police Office of Inspector General, *Review of the Events Surrounding the January 6, 2021, Takeover of the U.S. Capitol, Flash Report: Operational Planning and Intelligence*, Appendix B, Recommendations 4-7 (February 2021), <https://docs.house.gov/meetings/HA/HA00/20210415/111443/HHRG-117-HA00-Wstate-BoltonM-20210415-SD003.pdf> (“February Flash Report”); U.S. Capitol Police Office of Inspector General, *Review of the Events Surrounding the January 6, 2021, Takeover of the U.S. Capitol, Flash Report: Civil Disturbance Unit and Intelligence* at 2 and Appendix B, Recommendations 18-26 (March 2021), <https://docs.house.gov/meetings/HA/HA00/20210415/111443/HHRG-117-HA00-Wstate-BoltonM-20210415-SD004.pdf> (“March Flash Report”); U.S. House of Representatives, Committee on House Administration, *Statement of Inspector General Michael A. Bolton, United States Capitol Police Office of Inspector General* at 4-7 (April 15, 2021), <https://docs.house.gov/meetings/HA/HA00/20210415/111443/HHRG-117-HA00-Wstate-BoltonM-20210415.pdf> (“April IG Statement”); U.S. House of Representatives, Committee on House Administration, *Statement of Inspector General Michael A. Bolton, United States Capitol Police Office of Inspector General* at 2-3 (May 10, 2021), <https://docs.house.gov/meetings/HA/HA00/20210510/112587/HHRG-117-HA00-Wstate-BoltonM-20210510.pdf> (“May IG Statement”).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Judy A. Morris, “Implementing at Job Hazard Analysis Program,” *AAOHN Journal*, Vol 51 No. 4 at 190 (Apr. 2003), <https://journals.sagepub.com/doi/pdf/10.1177/216507990305100409#>.



JHA, the term “job” refers to “a sequence of activities that accomplish a work goal, rather than an occupation or general classification.”<sup>23</sup> Consequently, when the policing goal involves crowd control, the “job” would involve all of the activities in which officers would potentially be engaged to accomplish the mission.

When police departments analyze potential risks, “existing department data can be a useful resource, such as data on traffic accidents, on-the-job injuries and exposures, absentee rates, use of sick leave, job satisfaction, physical exams, immunization levels, insurance usage, and workers compensation requests.”<sup>24</sup> The risk assessment process often includes identifying and categorizing threats according to risk and frequency: e.g., high risk/high frequency, high risk/low frequency, low risk/high frequency, or low risk/low frequency.<sup>25</sup> For law enforcement agencies, when assessing risks, it can be useful to distinguish between daily (or routine) threats and exceptional threats.<sup>26</sup> Daily or routine threats are those associated with routine assignments and would include threats that may be mitigated by daily use of bullet-resistant vests or disposable medical gloves.<sup>27</sup> Exceptional threats would be those associated with a major incident and could involve instructing officers to wear additional PPE.<sup>28</sup>

To begin a JHA, OSHA provides the following guidance to employers:

- **Involve your employees.** It is very important to involve your employees in the hazard analysis process. They have a unique understanding of the job, and this knowledge is invaluable for finding hazards. Involving employees will help minimize oversights, ensure a quality analysis, and get workers to “buy in” to the solutions because they will share ownership in their safety and health program.
- **Review your accident history.** Review with your employees your worksite’s history of accidents and occupational illnesses that needed treatment, losses that required repair or replacement, and any “near misses” — events in which an accident or loss did not occur, but could have. These events are indicators that the existing hazard controls (if any) may not be adequate and deserve more scrutiny.
- **Conduct a preliminary job review.** Discuss with your employees the hazards they know exist in their current work and surroundings. Brainstorm with them for ideas to eliminate or control those hazards. If any hazards exist that pose an immediate danger to an employee’s life or health, take immediate action to protect the worker. Any problems that can be corrected easily should be corrected as soon as possible. Do not wait to complete your job hazard analysis. This will demonstrate your commitment to safety and health and enable you to focus on the hazards and jobs that need more study because of their complexity. For those hazards determined to present unacceptable risks, evaluate types of hazard controls. List jobs with hazards that present unacceptable risks, based on those most likely to occur and with the most severe consequences. These jobs should be your first priority for analysis.

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<sup>23</sup> *Id.* at 188.

<sup>24</sup> *See* BJA/PERF Guide at 14.

<sup>25</sup> *Id.*

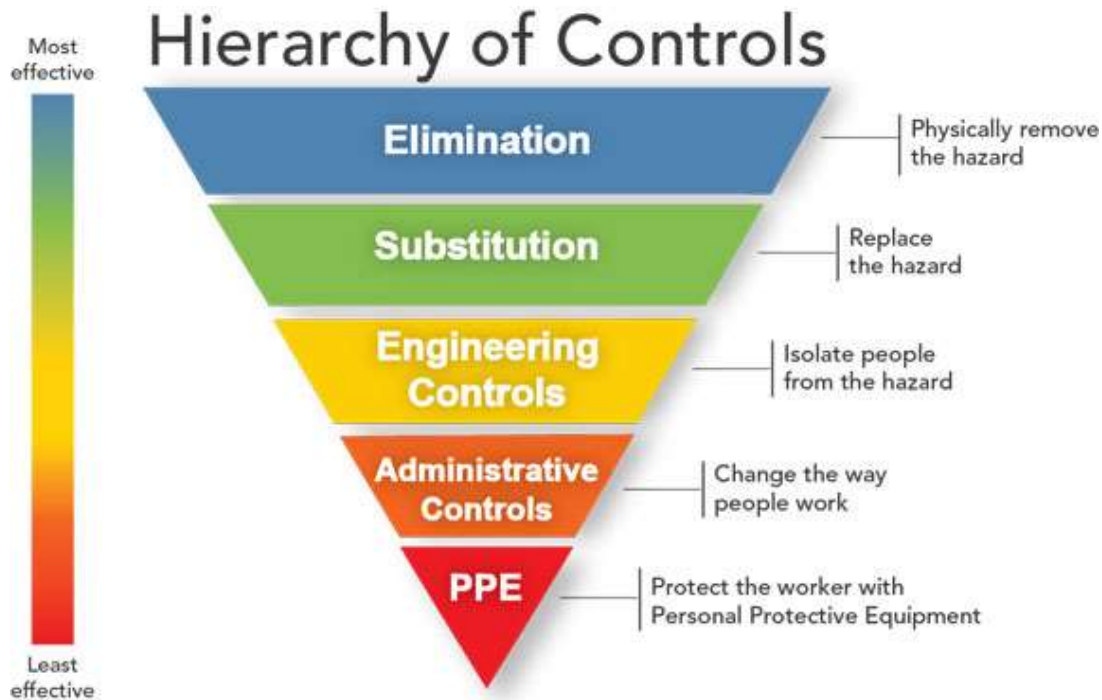
<sup>26</sup> *Id.* at 15.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

- **Outline the steps or tasks.** Nearly every job can be broken down into job tasks or steps. When beginning a job hazard analysis, watch the employee perform the job and list each step as the worker takes it. Be sure to record enough information to describe each job action without getting overly detailed. Avoid making the breakdown of steps so detailed that it becomes unnecessarily long or so broad that it does not include basic steps. You may find it valuable to get input from other workers who have performed the same job. Later, review the job steps with the employee to make sure you have not omitted something. Point out that you are evaluating the job itself, not the employee's job performance. Include the employee in all phases of the analysis — from reviewing the job steps and procedures to discussing uncontrolled hazards and recommended solutions. Sometimes, in conducting a job hazard analysis, it may be helpful to photograph or videotape the worker performing the job. These visual records can be handy references when doing a more detailed analysis of the work.<sup>29</sup>

As the OSHA guidance indicates, a completed JHA should be provided to employees so that they are aware of the potential threats and what actions can be taken to control those threats. When it comes to controlling potential threats, safety professionals often refer to the hierarchy of controls to help determine what controls would be most effective. The National Institute for Occupational Safety and Health (NIOSH) describes the hierarchy of controls as follows:



The idea behind this hierarchy is that the control methods at the top of the graphic are potentially more effective and protective than those at the bottom. Following this hierarchy normally leads

<sup>29</sup> U.S. Dep't of Labor, Occupational Safety & Health Admin., *Job Hazard Analysis* (OSHA 3071 Rev. 2002), at 4-5, <https://www.osha.gov/sites/default/files/publications/osha3071.pdf>.

to the implementation of inherently safer systems, where the risk of illness or injury has been substantially reduced.<sup>30</sup>

### **Elimination & Substitution**

While complete elimination or substitution of the hazards posed by a crowd containing violent attackers is not possible, certain actions can be taken to eliminate or substitute some of the risks that may be present at a crowded event. These include:

- physically removing hazards (e.g., trash cans that can house explosives; rocks and other objects that can be thrown; lightweight barriers such as bicycle racks that can be turned into weapons; and screening for prohibited weapons); and
- communicating the legal consequences of unlawful activities and the rules of engagement to the leaders and organizers of a planned event, engaging in problem-solving where possible, and taking proactive and appropriate legal action where warranted based on credible and specific threats before the event.

While such intervention and interdiction may not necessarily have completely eliminated or substituted the risks of January 6, these types of efforts can work in tandem with the engineering controls, administrative controls, and PPE to reduce, replace, or otherwise mitigate the risks that are present in a crowd, by altering the physical environment and changing the psychological dynamics.

### **Engineering Controls**

Engineering controls are those that isolate officers from the threats. General Honoré’s Task Force report identified several engineering controls that could be improved or implemented. Better perimeter fencing around the Capitol grounds was one of those recommendations.<sup>31</sup> The temporary bicycle fencing that was used on January 6 was not only ineffective but posed an additional hazard when members of the crowd used the fencing as a weapon to bludgeon officers and force their way into the Capitol Building.<sup>32</sup> Other engineering controls recommended by the Task Force included increasing integration and interoperability of certain facets of the physical security infrastructure involving the system of obstacles, cameras, sensors, and alarms.<sup>33</sup> The Task Force also suggested that the USCP mounted unit be reactivated, as a well-trained horse and rider can have a calming effect on the crowd and serve as “moving walls.”<sup>34</sup> Bicycle units

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<sup>30</sup> NIOSH, *Hierarchy of Controls* (Jan. 13, 2015), <https://www.cdc.gov/niosh/topics/hierarchy/default.html>.

<sup>31</sup> Task Force Report at 9.

<sup>32</sup> See USCP-FOP Statement at 2 (Feb. 26, 2021), <https://uscp-fop.com/wp-content/uploads/2021/03/Media-Release-Feb-26-2021.pdf>.

<sup>33</sup> Task Force Report at 9.

<sup>34</sup> *Id.* at 7.

have also been found to be useful for crowd control.<sup>35</sup> IG Bolton found that the USCP had only 20 mountain bikes available for approximately 160 First Responders Unit (FRU) officers.<sup>36</sup>

Another engineering control that has been found to be effective for crowd control is the use of bullhorns or public address systems to communicate directly with the crowd to discourage violent or illegal behavior. One of the recommendations coming out of the Police Executives Research Forum is to “Announce rules of engagement before and during demonstrations so protesters know what to expect, and announce the goals of the police department: e.g., facilitating First Amendment rights and maintaining public safety. Departments can make these announcements using social media, flyers, and clearly audible announcements during mass demonstrations.”<sup>37</sup> Maintaining lines of communication among crowds, organizers, and police is essential.<sup>38</sup> With respect to internal communication, the Task Force recommended that the USCP “take full advantage of its highly capable radio system to prevent confusion and establish clear command and control” including equipping all officers with earpieces and mandating their use.<sup>39</sup> Body-Worn Cameras were also recommended, which may also serve as a deterrent for illegal behavior.<sup>40</sup>

IG Bolton has also included recommendations to correct deficiencies regarding the training, maintenance, inventory, and use of less-lethal weaponry.<sup>41</sup> Less-lethal weaponry is an engineering control that can be used to maintain order and protect officers from threats posed during mass demonstrations. The SIS team notes that the presence of well-trained, well-equipped officers with proper protective gear and proper less-lethal weaponry on display has been a time-proven tactic of large city police agencies to discourage riots and other illegal behavior by protesters.

## **Administrative Controls**

Administrative controls are those that specify or alter the methods by which the work is done, including timing of shifts and breaks, policies and other rules, work practices, training, housekeeping, equipment maintenance, and other procedures.<sup>42</sup> With respect to the events of January 6, 2021, the lack of adequate operational plans, staffing plans, equipment maintenance, officer training, medical training,<sup>43</sup> and internal communications have been thoroughly

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<sup>35</sup> PEFF Report at 8.

<sup>36</sup> Committee on House Administration, *Statement of Inspector General Michael A. Bolton, United States Capitol Police Office of Inspector General* at 7 (June 15, 2021), <https://docs.house.gov/meetings/HA/HA00/20210615/112754/HHRG-117-HA00-Wstate-BoltonM-20210615.pdf> (“June IG Statement”).

<sup>37</sup> PERF Report at 68.

<sup>38</sup> *Id.* at 20, 67-68.

<sup>39</sup> Task Force Report at 6.

<sup>40</sup> *Id.*

<sup>41</sup> See March 2021 Flash Report, Recommendations 14-17, and June IG Statement at 7.

<sup>42</sup> See, e.g., OSHA Hazard Prevention and Control eTool, [https://ftp.cdc.gov/pub/Documents/OEL/06.%20Dotson/References/OSHA\\_2014.pdf](https://ftp.cdc.gov/pub/Documents/OEL/06.%20Dotson/References/OSHA_2014.pdf).

<sup>43</sup> Widely published photographs show officers having their eyes flushed out with bottled drinking water, which was corroborated by statements from officers and IG Bolton’s June 15, 2021 testimony regarding the First Responders Unit that “[M]any officers were affected by chemical irritants dispatched from the crowd. Those officers did not

documented in the Senate Staff Report, the Task Force report, and the reports and statements from IG Bolton.<sup>44</sup>

The SIS team suggests that the USCP should also consider training on pre-assault, pre-incident indicators and other tools, resources and tactics around “use of force” that may be helpful to apply to their specific needs and circumstances.<sup>45</sup> As a baseline, officers must have rigorous training, clear understanding and solid authority of the rules of engagement by which they may use force to protect themselves and others in crowd control situations. Various de-escalation, delay and diversion tactics, methods and tools can and should be strategically and effectively deployed to isolate officers from threats. Likewise, an officer’s knowledge of the circumstances in which they may use their hands, less-lethal weapons, and lethal weapons, along with their skills and capabilities in doing so, are critical to their safety and the safety of those they protect.

Further, the SIS team suggests that USCP personnel be trained and exercised on the most effective tactics to immediately arrest violators in a crowd-control setting at the first sign of illegal conduct. Major city police agencies across the country have long known and demonstrated that prompt arrests of protesters who cross the line into illegal disorderly conduct and other minor offenses, if seen by the larger crowd, have effectively discouraged the remaining protesters from further challenging the police and committing more violations.

Finally, the SIS team suggests that the USCP consider, plan, and resource:

- medical evacuation routes;
- trauma recovery programs for officers and their families;
- the dissemination and use of After Action Reports in both planning and training;
- forms of cohort training where officers build trust, understanding, and communication by training together in interoperable teams; and
- regular planned exercises of large crowd and potentially violent demonstrations at the Capitol with colleague law enforcement agencies such as the Washington D.C. Metropolitan Police Department and the police departments of Montgomery, Fairfax, and Arlington counties, as well as the National Guard of Washington, D.C.

## **Personal Protective Equipment (PPE)**

According to OSHA, personal protective equipment (PPE) is “equipment worn to minimize exposure to hazards that cause serious workplace injuries and illnesses” and may

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have a proper decontamination site within reach and ended up using water bottles or bathroom sinks to decontaminate.” Preparations for large demonstrations with the possibility of violence – when use of chemical irritants either by protestors or the police themselves may occur – should include not only an assessment to determine the proper PPE to protect officers from such irritants as discussed later in this report, but also arrangements for proper medical care for individuals who may nevertheless be affected by those irritants.

<sup>44</sup> Senate Staff Report at 45-62; Task Force Report at 4-7; February Flash Report at 1 & 40, Recommendations 1-7; March Flash Report at 55-58, Recommendations 1-5, 7, 9-16, 20-26; April IG Statement at 3-9; May IG Statement at 2-3; June IG Statement at 2-6.

<sup>45</sup> Such training is generally available from the Federal Law Enforcement Training Center (FLETC).

include items such as gloves, safety glasses and shoes, earplugs or muffs, helmets, respirators, or coveralls, vests and full body suits.<sup>46</sup> OSHA also advises that: “[w]hen engineering, work practice, and administrative controls are not feasible or do not provide sufficient protection, employers must provide personal protective equipment to their workers and ensure its proper use.”<sup>47</sup> As indicated below in our Findings, the OSHA standards set specific requirements covering the selection, use, maintenance, and testing of PPE. As a general summary, the OSHA standards and best practices require that:

- All personal protective equipment should be safely designed and constructed, and should be maintained in a clean and reliable fashion. It should fit comfortably, encouraging worker use. If the personal protective equipment does not fit properly, it can make the difference between being safely covered or dangerously exposed.
- If PPE is to be used, a PPE program should be implemented. This program should address the hazards present; the selection, maintenance, and use of PPE; the training of employees; and monitoring of the program to ensure its ongoing effectiveness.
- All employees who use PPE should be trained to know:
  - When it is necessary;
  - What kind is necessary;
  - How to properly put it on, adjust, wear, and take it off;
  - The limitations of the equipment; and
  - Proper care, maintenance, useful life, and disposal of the equipment.<sup>48</sup>

As indicated previously, fewer than 300 of the 1,200 officers deployed on January 6, 2021 were equipped with much in the way of PPE. For the most part, PPE was not available for those outside of the CDU platoons due to a failure to procure this equipment. Some of those officers in the CDU who were supposed to be equipped with PPE, found PPE that was inaccessible and defective due to a lack of adequate deployment planning, inspection, and maintenance of the equipment. Neither those officers in the CDU platoons nor those outside of the platoons received refresher training on how to handle mass demonstrations or utilize the PPE that was provided.

The Senate Staff Report, IG Bolton, and the Task Force have all made recommendations regarding how to improve the availability, inventory, storage, inspection, and maintenance of PPE that should be available to officers during mass demonstrations.<sup>49</sup> But, as this report makes clear, the inadequacy of the PPE provided to officers on January 6 is also due to other causes. These causes begin with either a nonexistent or deeply flawed job hazard analysis that failed to consider the known probable threats posed to officers who are deployed to control a mass demonstration with a possibility of violence. While improvement in intelligence gathering and distribution will undoubtedly contribute to better operational and staffing plans, this additional intelligence capability must be integrated into the creation of an accurate job hazard analysis so that adequate engineering, administrative, and PPE controls can be implemented to protect officers from the threats that they face. Safety and health considerations must be fully integrated

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<sup>46</sup> OSHA, *Personal Protective Equipment*, <https://www.osha.gov/personal-protective-equipment>.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> Senate Staff Report at 10-11; March Flash Report at 1-2 & 55-57, Recommendations 1-17; Task Force Report at 7.

into operational and staffing plans in order to be effective. Engineering and administrative controls are designed to be implemented in a way that complements PPE use. For example, the officers in CDU platoons who are equipped with full “turtle” gear will need to be swapped out because the gear is fatiguing to wear. Similarly, full-face gas masks can hamper vision and be disorienting, and there may be circumstances in which goggles and half-face respirators would be the better choice, so various types of respirators and goggles should be available to enable the best selection to be made to control the anticipated threats.

As mentioned above, the OSHA standards contain specific requirements regarding PPE. Our findings with respect to these standards are set forth below.

## **Findings**

Based on available evidence, we have determined that the failure to provide adequate PPE and training constitutes a violation of both the standards governing PPE and the General Duty Clause of the OSHAct.

### *Violations of PPE Standards*

As indicated above, Section 5(a)(2) of the OSHAct requires that each employer “shall comply with occupational safety and health standards promulgated under this chapter.” 29 U.S.C. § 654(a)(2).<sup>50</sup> The applicable OSHA standards governing PPE are codified in Subpart I of Part 1910 of the Code of Federal Regulations. The USCP was out of compliance with several of the requirements established in those standards.

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<sup>50</sup> Over the years, the USCP has maintained that it is not required to comply with the OSHA standards because Congress never passed the regulations approved by the OCWR Board under 2 U.S.C. § 1341(d). In response to our inquiry in this case, the USCP “decline[d] to provide its legal position regarding whether various OSHA standards or the General Duty Clause apply to the Department.” The plain language of the CAA clearly requires the USCP to comply with Section 5 of the OSHAct, which in turn requires compliance with the OSHA standards (and the General Duty Clause). 2 U.S.C. § 1341(a)(1). To date, every court that has considered this provision has clearly found this to be the case. *Harrison v. Architect of the Capitol*, 964 F. Supp. 2d 71, 80-81 (D.D.C. 2013); *Clendenny v. Architect of the Capitol*, 236 F. Supp. 3d 11, 17 (D.D.C. 2017). At the time Congress was considering legislation to make the OSHAct applicable to the legislative branch, it clearly knew that requiring compliance with Section 5 of the OSHAct would mean compliance with OSHA Standards. *See* 141 Cong. Rec. S621, S639 (Jan. 9, 1995) (section analysis) (“This section requires employees and employing offices to comply with the provisions of section 5 of the Occupational Safety and Health Act of 1970 (29 U.S.C. S. 654). Section 5 requires each employer to furnish employees a workplace free from recognized hazards that are causing or likely to cause death or serious physical harm and requires both employers and employees to comply with the Occupational Safety and Health Standards promulgated by the Secretary of Labor under section 6 of that act (29 U.S.C. S. 655).”) (emphasis supplied). Because Congress never approved the regulations issued by the OCWR Board, there are no exceptions to the standards for legislative branch offices. *See also* 2 U.S.C. § 1411 (requiring application of the “most relevant substantive executive agency regulation promulgated to implement the statutory provision at issue” when no regulation has been issued by the OCWR Board). Under the CAA, the OCWR cannot issue a substantive regulation without Congressional approval. 2 U.S.C. §§ 1384(c) and (d).

29 C.F.R. § 1910.132(a) requires that:

Protective equipment, including personal protective equipment for eyes, face, head, and extremities, protective clothing, respiratory devices, and protective shields and barriers, shall be provided, used, and maintained in a sanitary and reliable condition wherever it is necessary by reason of hazards of processes or environment, chemical hazards, radiological hazards, or mechanical irritants encountered in a manner capable of causing injury or impairment in the function of any part of the body through absorption, inhalation or physical contact.

USCP officers were exposed to hazards of process and environment, as well as chemical hazards, when attempting to protect the Capitol and its occupants against the participants in a demonstration that was expected to be large and to have the potential for violence. Nearly all of the categories of PPE listed in the standard would have been appropriate for use by officers on duty that day, yet a review of the video footage, official testimony and reports, and officer accounts reveals that most officers had little or no such PPE.

Even if a full assessment of potential hazards had been conducted, and it had been determined that other methods were more appropriate to protect officers as the demonstration began (such as enhanced crowd control measures)<sup>51</sup>, it is beyond question that properly maintained PPE should have been staged in strategic locations and made readily available to the officers in the event that the demonstration turned violent. Not only was adequate PPE not provided to all officers on duty on January 6, but some of the PPE was not accessible; for example, some protective shields were staged in a locked bus that could not be accessed by the officers who needed it, as described by IG Bolton.

Moreover, the USCP's compliance with the requirement that PPE be "maintained in a sanitary and reliable condition" is called into question by evidence such as that in IG Bolton's report regarding riot shields that shattered on impact as a result of improper inspection and storage, which led to Mr. Bolton's recommendation that "USCP should store its riot shields in the proper temperature-stable climate to prevent compromise of the riot shield's life span."<sup>52</sup> This also constitutes a violation of 29 C.F.R. § 1910.132(e), which dictates that "Defective or damaged personal protective equipment shall not be used."

29 C.F.R. § 1910.132(d) requires that, for certain types of PPE including eye, head, hand, and foot protection, the employer conduct a hazard assessment:

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<sup>51</sup> Generally, as noted previously, the hierarchy of controls provides that engineering controls – i.e., eliminating the hazard or placing a barrier between workers and the hazard – are favored over administrative controls or PPE when feasible. See <https://www.cdc.gov/niosh/topics/hierarchy/default.html>. However, the nature of the potential threats presented by a large crowd of people gathering for a demonstration makes it impossible to eliminate the hazards, so consideration should be given to more effective engineering and administrative controls. That said, the reality is that even with more effective engineering and administrative controls, hazards would still exist, especially to those officers on the front lines of a demonstration and others who might be called upon as backup. Therefore it is crucial to have appropriate PPE readily available in case engineering and administrative controls fail, or have sufficient officers already suited up in hard gear ready to take over for those who lack sufficient PPE.

<sup>52</sup> April IG Statement at 8.



(1) The employer assess the workplace to determine if hazards are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards are present, or likely to be present, the employer shall:

- (i) Select, and have each affected employee use, the types of PPE that will protect the affected employee from the hazards identified in the hazard assessment;
- (ii) Communicate selection decisions to each affected employee;<sup>53</sup> and,
- (iii) Select PPE that properly fits each affected employee.

(2) The employer shall verify that the required workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date(s) of the hazard assessment; and, which identifies the document as a certification of hazard assessment.

We requested information from the USCP regarding any hazard assessment they might have performed and asked to speak with individuals knowledgeable about that process. As of the date of this report, the USCP has not produced a written certification that a hazard assessment was performed. The available evidence indicates that, despite having prior knowledge that a large demonstration with the potential for violence would be occurring on January 6, 2021, the USCP did not conduct a hazard assessment for the event; nor is there evidence that it has conducted a more general hazard assessment for large demonstrations with the possibility of violence. Based on the available evidence, it seems clear that even if an assessment was done for the January 6 event, it was inadequate, and the USCP did not share it with its officers or provide them with adequate PPE to protect them from hazards that would be expected from a large demonstration with the possibility of violence.

It is clear from video evidence, accounts of officers, Congressional hearing testimony, and published reports that many of the officers on duty on January 6 were lacking PPE for their eyes, faces, and heads.<sup>54</sup> It cannot be reasonably disputed that a demonstration with the possibility of violence – whether protestors come armed or not – could put officers’ eyes, faces, and heads at risk. Rocks and other objects can be thrown at officers, and flagpoles and other items can be used to beat officers if protestors are able to get close enough. Although actual injuries are not required to prove a violation of the standard, the fact that many officers suffered injuries that could have been prevented or mitigated by the use of helmets, face shields, goggles, or equivalent PPE underscores the fact that such equipment should have been provided to officers who were charged with facing a large crowd of potentially violent demonstrators.

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<sup>53</sup> Many USCP officers did not receive any communications from management regarding any JHA or the PPE selection decisions either before or during the events of January 6, and radio communications during those events appear to have been hampered by the lack of earpieces.

<sup>54</sup> We do not currently have enough information to determine whether PPE to protect officers’ extremities, such as protective gloves and footwear, was provided to officers for use on January 6, whether officers were directed to use such protective equipment, or whether officers who suffered injuries to hands and feet were wearing protective equipment that could have prevented or mitigated those injuries. Video footage suggests that many officers were not wearing such equipment.

29 C.F.R. § 1910.133(a)(1) requires that “The employer shall ensure that each affected employee uses appropriate eye or face protection when exposed to eye or face hazards from flying particles, molten metal, liquid chemicals, acids or caustic liquids, chemical gases or vapors, or potentially injurious light radiation.” The evidence shows that multiple officers suffered eye injuries from chemicals, including pepper spray and other irritants; given that there is a reasonable chance that a demonstration with potential for violence could involve flying objects and chemical irritants – including both those used by demonstrators and those deployed by the police in an effort to break up a violent demonstration – police facing a demonstration with the possibility of violence on January 6 should have been provided with PPE to protect against those hazards.

29 C.F.R. § 1910.134 covers respiratory protection for employees. Section 1910.134(a)(2) provides that that “A respirator shall be provided to each employee when such equipment is necessary to protect the health of such employee. The employer shall provide the respirators which are applicable and suitable for the purpose intended.” Section 1910.134(d)(1)(iii) provides that “The employer shall identify and evaluate the respiratory hazard(s) in the workplace; this evaluation shall include a reasonable estimate of employee exposures to respiratory hazard(s) and an identification of the contaminant’s chemical state and physical form. Where the employer cannot identify or reasonably estimate the employee exposure, the employer shall consider the atmosphere to be IDLH [immediately dangerous to life or health].” There is currently no evidence that the USCP conducted such an evaluation to identify potential hazards to officers preparing for a large demonstration with the possibility of violence, to determine whether there was potential exposure to respiratory hazards from chemicals used by the protestors, the police themselves, or both. Again, the fact that numerous officers were indeed exposed to airborne chemical irritants – described in the publicly-available information to include pepper spray, bear spray, and tear gas – suggests that respiratory protection may have been necessary. Preparations for large demonstrations with the possibility of violence must include an evaluation of such potential respiratory hazards.

29 C.F.R. § 1910.135(a)(1) provides that “The employer shall ensure that each affected employee wears a protective helmet when working in areas where there is a potential for injury to the head from falling objects.” The potential for head injuries resulting from all manner of objects during a violent demonstration is patently evident – particularly, as we saw on January 6, objects falling onto officers’ heads after being flung or swung by protestors – and yet the lack of availability of tactical helmets to many USCP officers on January 6 has been well-documented. Chief Sund’s testimony that tactical helmets had been ordered but had not arrived provides context<sup>55</sup>, but does not excuse the USCP from complying with the requirement to provide its officers with head protection. Even if the Department has since then acquired the requisite number of helmets to outfit all of its officers, it must ensure that those helmets are made available to officers on duty during demonstrations with the possibility of violence, and provide proper training and communication to officers regarding the use of the helmets.

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<sup>55</sup> See Senate Staff Report at 58-59.

### *Violations of the General Duty Clause*

As indicated previously, under the General Duty Clause, the USCP must furnish to each of its employees “employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious harm to [its] employees” and becomes applicable when insufficient action is taken to control recognized hazards that are not specifically covered by the OSHA standards.

A General Duty Clause violation is established when: (1) an activity or condition in the employer’s workplace presented a hazard to an employee, (2) either the employer or the industry recognized the condition or activity as a hazard, (3) the hazard was likely to or actually caused death or serious physical harm, and (4) a feasible means to eliminate or materially reduce the hazard existed.<sup>56</sup>

There can be little question that the USCP was aware prior to January 6 that policing mass demonstrations with a potential for violence is an activity that presents serious health and safety risks to police officers, and that both the USCP and most other police departments recognize this activity to include hazards that are likely to – or actually do – cause death and serious injuries.<sup>57</sup>

Finally, there undoubtedly existed feasible means to eliminate or materially reduce the hazard. Accurate intelligence, properly analyzed and disseminated, can be used to develop a JHA, so that many of the engineering and administrative controls previously mentioned can be properly implemented in coordination with sufficient PPE that is properly inspected, maintained, and used in accordance with the OSHA standards. Such a program is feasible and would eliminate or materially reduce the hazards associated with large demonstrations. To abate the General Duty Clause violation, the USCP will have to demonstrate that it has considered the recommendations of the Senate Staff Report, the Task Force, IG Bolton, and any future report issued by an oversight committee or agency; corrected the identified deficiencies; and implemented a plan that integrates accurate intelligence into a JHA and an overall safety strategy that coordinates the use of engineering, administrative, and PPE controls to eliminate or mitigate the risks to safety and health posed by the identified hazards.<sup>58</sup>

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<sup>56</sup> *SeaWorld of Fla., LLC v. Perez*, 748 F.3d 1202, 1207 (D.C. Cir. 2014) (quoting *Fabi Constr. Co. v. Sec’y of Labor*, 508 F.3d 1077, 1081 (D.C. Cir. 2007)).

<sup>57</sup> Obviously, the USCP would not have planned on deploying the CDU platoons with PPE unless it recognized the potential for violence and the hazards this would pose to officers. Accurate intelligence is vitally important because police should “[r]espond to a mass demonstration in gear and with equipment that are proportional to the mood of the crowd. Officer safety is critical and should be considered at all times.” PERF Report at 71. As noted previously, approximately 140 officers were injured and there were three officer fatalities in connection with the events of January 6. Senate Staff Report at 29.

<sup>58</sup> When deciding upon appropriate abatement, we were guided by the recent decision in *BHC Northwest Psychiatric Hospital, LLC v. Secretary of Labor*, 951 F.3d 558, 560-61 (D.C. Cir. 2020), which affirmed a General Duty Clause violation based upon a hospital’s failure to adequately protect its employees from the “recognized hazard of patient aggression toward staff.” The specified abatement included the development and implementation of “an overarching workplace violence prevention program.” *Id.* at 566.

## **Recommendations Based Upon Best Practices**

As described in the beginning of this report, unlike other federal law enforcement agencies, the USCP is not required by law to “establish and maintain an effective and comprehensive safety and health program.”<sup>59</sup> Other federal law enforcement agencies, after consultation with employee representatives, are specifically required to:

- provide safe and healthful places and conditions of employment, consistent with the OSHA standards;
- acquire, maintain, and require the use of safety equipment, personal protective equipment, and devices reasonably necessary to protect employees;
- keep adequate records of all occupational accidents and illnesses for proper evaluation and necessary corrective action;
- consult with OSHA with regard to the adequacy as to form and content of records kept; and
- make an annual report to OSHA with respect to occupational accidents and injuries and the agency’s program under this section.<sup>60</sup>

Employees of the USCP perform some of the most dangerous work existing on Capitol Hill. Based on BLS statistics, the fatality rate for police officers is four times greater than the average for all occupations.<sup>61</sup> Law enforcement officers are faced with a high risk for injury, whether from firearms, motor vehicle crashes, or other traumatic events, and have a high rate of coronary vascular disease and suicide.<sup>62</sup>

Due to the dangerous nature of the work performed by USCP employees, the USCP should develop and implement a comprehensive occupational safety and health program that is integrated into a physical and mental health wellness program, which proactively addresses potential safety and health threats faced by officers. While the USCP has put into place some elements of such a program, a more comprehensive approach is needed so that all aspects of staffing and operational planning address safety and health issues. An advisory panel convened by the Police Executive Research Forum (PERF) reached three points of consensus in this regard:

1. Law enforcement needs a comprehensive approach to occupational health and safety that includes three basic components:
  - a. Awareness of and education about existing and new health and safety threats that employees may face;
  - b. Equipment and programs that can help prevent illness and injury; and
  - c. Training on proper use of equipment and other steps that can be taken to reduce the risk associated with these threats.

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<sup>59</sup> This is a requirement of federal agencies covered by Section 19 of the OSHAct, 29 U.S.C. § 668.

<sup>60</sup> *Id.*

<sup>61</sup> U.S. Bureau of Labor Statistics, *Fact Sheet: Police Officers* (2018; updated on July 7, 2020), <https://www.bls.gov/iif/oshwc/cfoi/police-2018.htm>.

<sup>62</sup> BJA/PERF Guide at 1.

2. This comprehensive approach needs to be proactive in nature and lay the foundation for addressing day-to-day needs rather than only being reactive or in response to emergency situations.
3. Making occupational health and safety routine requires a culture change within the department which may take time. However, transitioning to a culture of health and safety now can help ensure a department's resilience during a major incident, such as a pandemic flu, and help mitigate the impact on the department.<sup>63</sup>

In his testimony and statements, IG Bolton expressed the need for culture change at the USCP.<sup>64</sup> That culture change must include fostering a culture of safety and health. Any comprehensive safety and health program implemented by the USCP must be prominent and viewed as a high priority. The USCP should consider moving this program out of the Chief Administrative Officer's control and placing it under the direct control of a uniformed safety officer of sufficient rank and knowledge to be involved in all operational and staff planning, so that all measures protecting the safety and health of officers are fully considered and implemented. This comprehensive safety and health program would also ensure that the training, equipment, inspection, and maintenance deficiencies detailed in the reports issued by IG Bolton, the Task Force, and oversight committees are fully addressed. The brave men and women who serve as USCP officers deserve nothing less, as do all Members and staff on the Hill who rely upon them for protection.

### **Acknowledgements**

As indicated at the outset of this report, in conducting this investigation and preparing this report we received the assistance of Safir Intelligence and Security (SIS), who assembled the team previously identified. Our in-house team of attorneys and safety and health professionals was also deeply involved in this investigation and report, especially Deputy General Counsel Hillary Benson, OSH Program Manager Shonda Perkins, and Senior OSH Specialist Mark Nester.

Dated: July 2, 2021



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John D. Uelmen  
General Counsel

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<sup>63</sup> *Id.* at 12.

<sup>64</sup> *See* April IG Statement at 3.