

Masq-or-Raid: Why Concealing Cops' Identities Creates Reasonable Doubt When Cops Are Victims

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The reelection of President Donald Trump has brought with it increasingly antagonistic federal law enforcement practices to institute his “tough on crime” agenda. Many officers, particularly those who work in immigration enforcement, are now wearing masks while arresting individuals. Criminals have noticed. Indeed, criminals across the country are now mimicking this masking tactic to rob, burglarize, and otherwise commit crimes against victims who now believe that officers wear masks.

While the practice of officers and criminals masking poses clear safety risks to members of society, it is paradoxically dangerous to the officers seeking to protect themselves. In criminal prosecutions, many jurisdictions require the government to prove that the defendant knew the victim was a police officer to prove murder or assault of an officer. While federal law does not impose this knowledge requirement, it still allows defendants to claim self-defense where victim police officers fail to identify themselves as law enforcement officers. This Essay argues that the rise of masked officers and their criminal copycats allows jurors to find reasonable doubt where it previously did

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not exist in murder- or assault-of-police-officer cases. Specifically, it argues that masking gives jurors a greater opportunity to find that a defendant acted in self-defense, to find that the government failed to prove the defendant knew the victim was a police officer, or to engage in jury nullification. Ultimately, the Essay recommends that officers should return to maskless policing to help restore trust from the community and to be the officers that America deserves.

Introduction

The two police officers arrive at the defendant's home in southeast Houston at 11:00 p.m. to serve a warrant for burglary. Because the defendant lives in a high-crime area, the officers are wearing body armor and have their badges prominently displayed around their necks. In line with the growing trend among federal law enforcement officers to wear face masks during immigration arrests,¹ so too are these officers. But the defendant is suspicious. After all, the officers did not show up in a marked police car. There were no lights and sirens running. The defendant refuses to open the door, later admitting that the officers did not really look like cops. When he refuses to open his door, an argument ensues. The officers and defendant exchange fire. Witnesses hear twenty-two rounds. The officers are killed instantly. This is the type of danger that police face every day.²

1. Sam Levin, *The Alarming Rise of US Officers Hiding Behind Masks: 'A Police State,'* GUARDIAN (June 25, 2025, at 08:00 ET), <https://www.theguardian.com/us-news/2025/jun/25/immigration-officers-wearing-masks> [<https://perma.cc/QB2Q-R3CS>].

2. *See Fatal and Non-Fatal Violence to Police Officers During 2012–2022*, U.S. BUREAU LAB. STATS. (May 14, 2024), <https://www.bls.gov/opub/ted/2024/fatal-and-non-fatal-violence-to-police-officers-during-2012-2022.htm> [<https://perma.cc/ZSA2-AK7V>] (showing deaths caused by fatal injuries and homicides of police officers from 2012 to 2022).

This tragedy recently occurred in Houston, Texas, with one key difference. The now-deceased officers who arrived in an unmarked car wearing face masks, body armor, and badges *were not actually police officers*.³ They were criminal copycats mimicking U.S. Immigration and Customs Enforcement (ICE) tactics touted by the Trump administration in recent immigration raids.⁴ And they are not the only ones.⁵

ICE's increasingly questionable law enforcement tactics under the Trump administration are shocking,⁶ but not surprising. After all, Trump won the 2024 election largely because of his tougher stance on immigration.⁷ And this was after his first administration's signature immigration policy, the Travel Ban, had

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3. Re'Chelle Turner, *2 Suspects Dead After Home Invasion in SE Houston; Police Say Men Posed as Officers*, CLICK2HOUSTON (Aug. 23, 2025, at 13:45 CT), <https://www.click2houston.com/news/local/2025/08/23/2-suspects-dead-after-home-invasion-in-se-houston-police-say-men-posed-as-officers/> [https://perma.cc/9999-AZTS].
 4. *See id.*; Ted Hesson, Tim Reid & Mike Scarcella, *Los Angeles ICE Raids Fuel Controversy over Masked Agents*, REUTERS (June 9, 2025, at 17:17 CT), <https://www.reuters.com/world/us/los-angeles-ice-raids-fuel-controversy-over-masked-agents-2025-06-09/> [https://perma.cc/8ZXV-6FHM]; Ginia Bellafante, *Who Gets to Wear a Mask?*, N.Y. TIMES (July 18, 2025, at 03:00 ET), <https://www.nytimes.com/2025/07/18/nyregion/ice-police-masks-nassau-county.html> [https://perma.cc/D99S-KJB7].
 5. Zak Cheney-Rice, *No One Can Tell Who's a Cop Anymore*, N.Y. MAG.: INTELLIGENCER (July 28, 2025), <https://nymag.com/intelligencer/article/trump-immigration-ice-agents-masks-criminal-imposters.html> [https://perma.cc/AA6Y-7B3C] (discussing separate incidents of private citizens posing as ICE agents in Bibb County, Georgia; Houston, Texas; Huntington Park, California; Charleston, South Carolina; and Raleigh, North Carolina).
 6. *See Levin, supra* note 1.
 7. *See* William A. Galston, *Americans Are Changing Their Minds About Trump's Immigration Policies*, BROOKINGS INST. (July 29, 2025), <https://www.brookings.edu/articles/americans-are-changing-their-minds-about-trumps-immigration-policies/> [https://perma.cc/5ZDP-Y8LH].

been decried as discriminatory based on race,⁸ gender,⁹ religion,¹⁰ and national origin.¹¹ To be sure, ICE is claiming that masking is necessary for officer safety. Specifically, ICE insists that its officers “are facing a 413% increase in assaults against them,”¹² and, according to Acting ICE Director Todd Lyons, the masks are necessary because “[p]eople are trying to identify them and post their photos online, dox them, [and] threaten their families.”¹³ While officers and their families deserve to be safe from criminal activity, it does not appear that ICE has

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8. See, e.g., Sherally Munshi, *Manners of Exclusion: From the Asiatic Barred Zone to the Muslim Ban*, in DEEPENING DIVIDES: HOW TERRITORIAL BORDERS AND SOCIAL BOUNDARIES DELINEATE OUR WORLD 118, 118–19 (Didier Fassin ed., 2020).
 9. See, e.g., Marcia Zug, *Make Immigration Great Again: How Morales-Santana Could Signal the End of Sexist Immigration Law and Provide a Way to Fight the Travel Ban*, 7 WAKE FOREST L. REV. ONLINE 27, 28–30 (2017), <https://www.wakeforestlawreview.com/wp-content/uploads/2025/10/7WakeForestLRevOnline27.pdf> [https://perma.cc/PJ9W-ENCC].
 10. See, e.g., Eunice Lee, *Non-Discrimination in Refugee and Asylum Law (Against Travel Ban 1.0 and 2.0)*, 31 GEO. IMMIGR. L.J. 459, 460–61 (2017).
 11. See *id.*
 12. Press Release, U.S. Dep’t of Homeland Sec., DHS Releases Statement on Violent Rioters Assaulting ICE Officers in Los Angeles, CA and Calls on Democrat Politicians to Tone Down Dangerous Rhetoric About ICE (June 7, 2025), <https://www.dhs.gov/news/2025/06/07/dhs-releases-statement-violent-rioters-assaulting-ice-officers-los-angeles-ca-and> [https://perma.cc/TH3A-VEE5].
 13. Luke Barr, *Inside the Facility Where ICE Officers Train as the Trump Administration Ramps Up Hiring*, ABC NEWS (Aug. 23, 2025, at 14:16 CT), <https://abcnews.go.com/US/inside-facility-ice-officers-train-trump-administration-ramps/story?id=124919839> [https://perma.cc/G34M-MA68].

provided any evidence to justify these actions.¹⁴ Nevertheless, local governments are beginning to follow ICE's lead.¹⁵

Assuming arguendo that these justifications are valid, it is still difficult to overlook how wearing a mask to conceal one's identity impacts the perception of law enforcement. First, while officers working undercover or in organized crime or anti-terrorism units often conceal their identities, that is not the norm among most American police officers.¹⁶ The standard practice of American police officers is to prominently display their identities.¹⁷ This practice permits members of the public to file complaints against officers for misconduct.¹⁸ According to former

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14. Professor Jules Epstein has twice requested the source of the 413% number from the Department of Homeland Security (DHS), but DHS has not responded. Jules Epstein & Beckie Schatschneider, *No Masks – No Mas*, VOICES @ TEMPLE L. (June 26, 2025), https://www2.law.temple.edu/voices/no-masks-no-mas/?fbclid=IwY2xjawMa2fRleH-RuA2FbQlxMQBicmlkETFNa1FBSD-NPdnRmTGt6NDNUAR785NFKRbBGgB3cNzh0z6ORYnGE7zFK5pi-kLeNONqAYDOvcZtS2xVf-IBZ1zg_aem_LtiKXSVwM0Fz6ysrfGO5gg [<https://perma.cc/XV2E-5NKG>]; see also Philip Bump, *Parsing ICE's Mixed-Up, Hard-to-Believe Assault Claims*, WASH. POST (June 19, 2025), <https://www.washingtonpost.com/opinions/2025/06/19/brad-lander-ice-assault-masking/> [<https://perma.cc/SAM7-37UA>].
 15. See, e.g., Brandon Cruz, *Nassau County Will Allow Cops to Wear Face Masks for ICE Raids, Undercover Work: 'We Have Their Back'* N.Y. POST (July 13, 2025, at 18:52 ET), https://nypost.com/2025/07/13/us-news/nassau-county-will-allow-cops-to-wear-face-masks-for-ice-raids-undercover-work/?utm_source=twitter&utm_medium=social&utm_campaign=nypost [<https://perma.cc/9J5M-PA3V>] (discussing how Nassau County, New York's "new executive order now gives federal, state and local law-enforcement officers the option to wear masks during operations such as drug and gang raids and soon, immigration enforcement alongside ICE").
 16. See Levin, *supra* note 1.
 17. For example, former FBI Agent Mike German recently stated in an interview that he is "not aware of any period where US law enforcement officials wore masks." See Levin, *supra* note 1.
 18. See Hesson et al., *supra* note 4.

FBI Agent Mike German, “[w]hen it’s hard to tell who a masked individual is working for, it’s hard to accept that that is a legitimate use of authority.”¹⁹ Such activity is found in authoritarian regimes including in Nicaragua,²⁰ Iran,²¹ and Venezuela,²² and should not be what the United States tries to emulate. Second, it is a stark reminder of America’s historic ties to racist organizations like the Ku Klux Klan, whose members wore masks to “terrorize their targets, using hoods and masks to disguise their identities when carrying out acts of violence under the cover of darkness.”²³ While the Department of Homeland Security (DHS) has complained about comparing ICE to a secret police force or neo-Nazi group,²⁴ American history makes such comparison unavoidable.

Paradoxically, the trend of officers and their criminal copycats wearing masks may be harmful to officers lawfully performing their duties. Specifically, to prove a crime like murder or assault of a police officer, many jurisdictions require proof

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19. See Levin, *supra* note 1. German notes, however, that some officers who are now assisting ICE, but who usually do not work for ICE or in immigration enforcement, may be masking to protect their otherwise exemplary law enforcement reputations. *Id.*
 20. See *Nicaragua Launches ‘Volunteer’ Police Force that Critics Fear Will Be Paramilitary*, REUTERS (Jan. 17, 2025, at 18:49 CT), <https://www.reuters.com/world/americas/nicaragua-launches-volunteer-police-force-that-critics-fear-will-be-paramilitary-2025-01-18/> [https://perma.cc/HTQ7-DQ9L].
 21. See Karl Vick, *Children in Riot Gear, Soldiers in Ski Masks: What Images of Iran’s Security Forces May Reveal About a Revolt*, TIME (Oct. 28, 2022, at 15:38 ET), <https://time.com/6221411/iran-protests-security-forces-images/> [https://perma.cc/L3Z5-LA3D].
 22. See Ana Vanessa Herrero & Nicholas Casey, *Maduro Turns to Special Police Force to Crush Dissent*, N.Y. TIMES (Jan. 30, 2019), <https://www.nytimes.com/2019/01/30/world/americas/venezuela-maduro-protests-faes.html> [https://perma.cc/U7GW-5PBN].
 23. *Top 5 Questions About the KKK*, PBS: AM. EXPERIENCE, <https://www.pbs.org/wgbh/americanexperience/features/klans-ville-faq/> [https://perma.cc/6Q4U-XHH6].
 24. See Hesson et al., *supra* note 4.

that the defendant *knew* the victim was a police officer at the time of the incident.²⁵ Increased incidences of criminals wearing masks to mimic police officers can create reasonable doubt about whether a defendant possessed this knowledge. To be sure, in cases where this occurs and a defendant is acquitted or only convicted of a lesser included offense, that would be the legally correct result since jurors should acquit when they find reasonable doubt for a given offense. But, to the officer who was legally performing his or her duties amid the murder or assault, it most certainly will not seem like it.

This Essay proceeds as follows. Part I outlines federal and state rules regarding proof of knowledge in murder and assaultive offenses against police officers. It details federal and state differences, as well as the role of presumptions in criminal cases. Part II argues that the increased use of masks by law enforcement officers and their copycats increases the likelihood of jurors acquitting defendants charged with murder or assault of a police officer. Specifically, it discusses how jurors are more likely to acquit by failing to find that the defendant knew the victim was a police officer or through jury nullification, which occurs when a criminal jury acquits a defendant “even when its findings of fact, if literally applied to the law as stated by the judge, would have resulted in a conviction.”²⁶ Part II further recommends that, if ICE and its copycats continue to mask, all jurisdictions impose a knowledge requirement in such cases to better reflect reality in America. The Essay concludes by

25. See, e.g., Tex. Penal Code Ann. §§ 19.03(a)(1), 22.01(b-2); 720 ILL. COMP. STAT. 5/12-2(b); MD. CODE ANN., CRIM. LAW § 3-203; CAL. PENAL CODE § 243(b). While the Texas and Illinois statutes require knowledge, those from Maryland and California apply slightly less strict standards requiring that the defendant knows or reasonably should know that the victim is a police officer.

26. WAYNE R. LAFAVE, JEROLD H. ISRAEL, NANCY J. KING, ORIN S. KERR & ANDREW D. LEIPOLD, CRIMINAL PROCEDURE § 22.1(f) (7th ed. 2025).

recommending that law enforcement end its practice of wearing masks to restore trust from the community and to be the officers that America deserves.

I. Murder and Assault of a Police Officer

Under President Trump, federal law enforcement has taken a more antagonist approach to policing civilians.²⁷ Physical altercations between civilians and the police may result in injuries or death to civilians *and* the police.²⁸ While laws banning acts of violence are nothing new,²⁹ laws enhancing such crimes based upon the status of the victim are a more recent development.³⁰ Such laws are usually thought of in the context of hate crimes, which enhance the level of crime or punishment when the defendant targets the victim due to the victim's race, sex, religion, national origin, gender, sexual orientation, gender identity, or disability.³¹ However, similar laws do the same when the defendant targets the victim due to the victim's profession.

27. See, e.g., Katie Rogers, *Trump Takes Control of D.C. Police, Citing 'Bloodthirsty Criminals.' But Crime Is Down.*, N.Y. TIMES (Aug. 13, 2025), <https://www.nytimes.com/2025/08/11/us/politics/trump-washington-dc-police.html> [<https://perma.cc/6LJF-AT3A>].

28. See *Fatal and Non-Fatal Violence to Police Officers During 2012–2022*, *supra* note 2; Hayden Godfrey, Steven Rich & Andrew Ba Tran, *Fatal Force: 10,429 People Have Been Shot and Killed by Police from 2015 to 2024*, WASH. POST (Dec. 31, 2024), <https://www.washingtonpost.com/graphics/investigations/police-shootings-database/> [<https://perma.cc/WSR8-FW7F>].

29. See, e.g., *Exodus* 20:13 (King James) (“Thou shalt not kill.”).

30. See *Hate Crime Laws*, U.S. DEP'T OF JUST. C.R. DIV. (Mar. 7, 2019), <https://www.justice.gov/crt/hate-crime-laws> [<https://perma.cc/2Z8Y-NNEM>] (describing the history of hate crime laws).

31. *Id.*

Of course, such enhancement is not extended to victims serving in all professions. Rather, they are usually limited to police officers, judges, and emergency services personnel.³² Depending on the jurisdiction, these laws may or may not require proof beyond a reasonable doubt that the defendant *knew* the victim was a police officer. According to federal law, a person is guilty of homicide or attempted homicide of a federal officer when he or she (1) kills or attempts to kill (2) any United States government officer or employee (3) while that officer or employee is “engaged in or on account of the performance of official duties.”³³ Similarly, a person is guilty of assaulting a federal officer when he or she (1) assaults (2) any United States government officer or employee (3) while that officer or employee is “engaged in or on account of the performance of official duties.”³⁴

Notably, these federal statutes do not clearly state whether the defendant must know that the victim is a federal employee at the time of the incident. Whether such knowledge is required was decided by the Supreme Court in *United States v. Feola*.³⁵ In *Feola*, the defendants were involved in a “classic narcotics ‘rip-off’” where they tried to sell fake drugs to people who happened to be undercover federal agents or forcibly steal the agents’ money if the undercover agents realized the drugs were fake.³⁶ When one of the agents realized the defendants’

32. While state statutes differ in the types of professions covered by these types of laws, Texas’s laws on this issue provide a common example of the types of people protected. See, e.g., Tex. Penal Code Ann. § 22.01(b-2), (d).

33. 18 U.S.C. § 1114.

34. *Id.* § 111. A person is similarly guilty of assaulting a federal officer when that individual assaults a *former* federal officer or employee because of his or her previous role for the federal government. *Id.*

35. 420 U.S. 671, 684 (1975). In 1996, § 1114 was amended in a manner interpreted to include federal informants in the list of appropriate federal officers. See *United States v. Gaither*, 533 F. Supp. 2d 540, 543, 546 (W.D. Pa. 2008).

36. *Feola*, 420 U.S. at 674.

plan of assault, he “drew his revolver in time to counter an assault upon another agent from the rear.”³⁷ The defendants were ultimately charged with conspiring to assault and assaulting federal officers, were convicted of these charges, and appealed, all of which led to the Supreme Court’s decision.³⁸

Reversing the Second Circuit Court of Appeals and writing for the majority, Justice Blackmun reiterated the longstanding and stipulated understanding that the federal officer assault statute does not require the government to prove that the defendant knew the victim was a federal officer or employee.³⁹ Justice Blackmun noted Congress’s purpose in not requiring such knowledge, stating that to meet Congress’s goal of providing the utmost protection to federal officers, “§ 111 cannot be construed as embodying an unexpressed requirement that an assailant be aware that his victim is a federal officer.”⁴⁰ Justice Blackmun then held that to establish a defendant’s guilt under the federal officer assault statute, the only intent the government must prove is the intent to commit an assault.⁴¹ Prior to announcing the holding, Justice Blackmun interestingly observed that this outcome “poses no risk of unfairness to defendants.”⁴² Specifically, Justice Blackmun noted that defendants such as those in this case are hardly innocent and “know[] from the very outset that [their] planned course of conduct is wrongful.”⁴³ To be sure, Justice Blackmun pointed out that in some situations, a defendant’s knowledge of the victim’s status would

37. *Id.*

38. *Id.* at 672–73.

39. *Id.* at 677, 684. Justice Blackmun observed that the Courts of Appeals were unanimous in this belief, though he noted that some earlier cases held otherwise. *Id.* at 677 & nn.11–12.

40. *Id.* at 684.

41. *Id.* at 686.

42. *Id.* at 685.

43. *Id.*

be relevant. Specifically, in a situation where the federal officer failed to identify himself as such, his conduct may be construed as unlawful force that allowed the defendant to act in self-defense, and this mistake of fact would be relevant.⁴⁴ Overall, however, proof of knowledge of the victim's status is largely irrelevant to proving murder or assault of a federal officer.

And yet, in many states, quite the opposite is true.⁴⁵ In Texas, for example, to prove murder or assault of a police officer, one element the State must prove beyond a reasonable doubt is that the defendant knows the victim is a police officer at the time of the incident.⁴⁶ In these cases, defendants often claim that they did not know that the victim was a police officer at the time of the incident. While such lack of knowledge by itself fails to guarantee a "not guilty" verdict—the defendant could still be found guilty of murder or assault—it takes the more serious offense off the table.⁴⁷

In cases where knowledge of the victim's status is an element of the crime, judges must instruct the jury that the requisite knowledge may be presumed. In Texas, for example, a judge would instruct the jury that that knowledge may be presumed

44. *Id.* at 686.

45. *See supra* note 25 and accompanying text.

46. Tex. Penal Code Ann. §§ 19.03(a)(1), 22.01(b-2). In Texas, police officers and all other law enforcement officers are legally known as "peace officers." *See* Tex. Code Crim. Proc. Ann. Art. 2A.001. Texas has a nearly identical statute criminalizing assault against a public servant. *See* Tex. Penal Code Ann. § 22.01(b)(1). Public servants include all government officers, employees, and agents, including jurors, grand jurors, and candidates for public office, among others. *See* Tex. Penal Code Ann. § 1.07(41). Thus, while all peace officers are public servants, not all public servants are peace officers.

47. In Texas, for example, while assault is a Class A misdemeanor punishable by up to one year in county jail, Tex. Penal Code Ann. §§ 22.01(b), 12.21(2), assault of a peace officer is a second degree felony punishable by between two and twenty years in state prison. Tex. Penal Code Ann. §§ 22.01(b-2), 12.33(a).

where the victim was “wearing a distinctive uniform or badge indicating the person’s employment” as a police officer.⁴⁸ That presumption is not mandatory, which would require the jury to find this element of the offense, because in a criminal case it would unconstitutionally “relieve the State of its constitutionally-required burden of proving guilt beyond a reasonable doubt.”⁴⁹ Rather, it is permissive, which “permits but does not require the fact finder to find the elemental fact on proof of the predicate fact, and places no burden on the accused to disprove the elemental fact.”⁵⁰ In essence, presumptions in criminal cases “can only operate as inferences.”⁵¹ These inferences, when combined with increasingly antagonistic ICE tactics and criminal copycats, will likely create opportunities for juries to find reasonable doubt. Such results may not be in the best interests of officers lawfully performing their duties.

II. Issues and Solutions

The fact that federal and state laws allow for jurors to acquit defendants charged with murder or assault of a police officer is neither new nor controversial. This acquittal power is crucial to the proper functioning of the American system of criminal justice. However, the Trump administration’s stated goal of encouraging officers to wear masks to protect officers may have

48. See Tex. Penal Code Ann. §§ 19.03(d), 22.01(d). Such circumstantial evidence of guilt is often necessary, as defendants rarely admit their awareness of the victim’s status and requiring such direct evidence would make prosecutions for these offenses largely impossible.

49. *Clementson v. State*, 492 S.W.3d 802, 805 (Tex. App.—Amarillo 2016, pet. ref’d) (first citing *Francis v. Franklin*, 471 U.S. 307, 317 (1985); then citing *Sandstrom v. Montana*, 442 U.S. 510, 524 (1979); and then citing *Willis v. State*, 790 S.W.2d 307, 309 (Tex. Crim. App. 1990) (en banc)); see also CHRISTOPHER MUELLER, LAIRD KIRKPATRICK & LIESA RICHTER, EVIDENCE § 3.13, at 145 (6th ed. 2018).

50. *Clementson*, 492 S.W.3d at 805; see also *Willis*, 790 S.W.2d at 310. Texas further requires that judges instruct jurors on the permissive nature of the presumption. See Tex. Penal Code Ann. § 2.05(a)(2)(B).

51. See MUELLER ET AL., *supra* note 49.

the unintended consequence of harming them. Specifically, it gives jurors a greater opportunity to find that the defendant acted in self-defense, or to find that the defendant did not know the victim was a police officer, or to acquit via jury nullification. To be sure, the author is not suggesting that the act of wearing a mask as a police officer invites physical harm or will lead to acquittals in all cases where a masked officer is murdered or assaulted. As with most criminal cases that proceed to trial, the defendant is overwhelmingly likely to be convicted here too.⁵² But a policy that makes such acquittal even slightly more likely may conflict with officers' own interests.

As discussed by Justice Blackmun in *Feola*, a defendant may claim self-defense in an officer assault case where the defendant, due to a mistake of fact caused by the officer's failure to identify herself or himself, believed that his or her use of force was lawful.⁵³ A defendant may raise this defense, either through testimony or facts to support it, in a situation involving an officer wearing plainclothes and a mask. The accused may testify that he or she is aware of criminals doing the same to commit crimes. If a jury were to believe this defense, the defendant would not just be acquitted of the most serious count of murder or assault of an officer. He or she would be acquitted of all other charges where the defense of self-defense applied. In situations where the officers wore plainclothes, masks, and no articles of clothing suggesting they are police officers, jurors would likely have the facts necessary to find such a mistake of fact. In situations where the officers testify that they verbally

52. See, e.g., John Gramlich, *Only 2% of Federal Criminal Defendants Went to Trial in 2018, and Most Who Did Were Found Guilty*, PEW RSCH. CTR. (June 11, 2019) (finding that 83% of all federal defendants who proceeded to trial were convicted), <https://www.pewresearch.org/short-reads/2019/06/11/only-2-of-federal-criminal-defendants-go-to-trial-and-most-who-do-are-found-guilty/> [<https://perma.cc/ZFE8-SBW4>].

53. See *supra* note 44 and accompanying text.

announced their status, unless that testimony is corroborated by audio or video evidence, such proof would likely amount to “he said, she said.” Based on the author’s nearly ten years of experience as a prosecutor, that is not enough for a jury to find proof beyond a reasonable doubt.⁵⁴ The lack of such audio or video corroboration is likely why a protester charged with assaulting a federal agent during a 2025 immigration protest in Los Angeles was acquitted even though a fellow agent testified to having witnessed the alleged assault.⁵⁵

Because the state-court knowledge element can be, at most, permissibly presumed under the Constitution, it is possible that jurors may not find that the defendant knew the victim was a police officer. As previously discussed, knowledge may be presumed where the officer clearly appeared to be a police officer.⁵⁶ This occurs when the officer announces that she is an officer, her uniform makes this obvious, she is in or near a marked police car, that car has its lights or sirens on, or a combination of these facts. But, when the rise of copycats blurs the line between who a defendant knows is a police officer versus

54. According to the Department of Justice, law enforcement “agencies that had acquired body-worn cameras [had] 29 body-worn cameras in service per 100 full time officers (expected to increase to 50/100 by late 2017 based on the 2016 data).” *Research on Body-Worn Cameras and Law Enforcement*, U.S. DEP’T OF JUST.: NAT’L INST. OF JUST. (Jan. 22, 2023), <https://nij.ojp.gov/topics/articles/research-body-worn-cameras-and-law-enforcement> [<https://perma.cc/LW26-T82N>]. While footage from a body-worn camera could corroborate the officer’s testimony, a jury may still not be convinced if evidence suggested that the defendant believed the officer was actually a criminal.

55. See, e.g., Brittny Mejia & James Queally, *Protester Found Not Guilty of Assault Despite Top Border Patrol Official’s Testimony*, L.A. TIMES (Sept. 17, 2025, at 15:19 PT), <https://www.latimes.com/california/story/2025-09-17/immigration-protest-case-trial-los-angeles> [<https://perma.cc/NZ2R-KTGY>].

56. See *supra* note 48 and accompanying text.

who is a criminal, this makes it easier for jurors to find that prosecutors failed to prove the element of knowledge beyond a reasonable doubt. Consider Figures 1, 2, and 3.⁵⁷ Figure 1 shows an actual ICE agent wearing a mask and a vest with minimal markings that clearly identify his status as a law enforcement officer. Other ICE agents have worn clothing bearing even fewer identifying markings, if any at all.⁵⁸ On the other hand, Figure 2 shows a criminal wearing a mask and a vest with markings made to trick victims into believing he is a law enforcement officer. It is no wonder that a political cartoonist would create the drawing in Figure 3, which exemplifies the confusion that victims and jurors are likely to feel when confronted by a masked law enforcement officer or criminal. This confusion will likely make it easier for jurors to fail to find *mens rea* even when it may otherwise have been proven. To be sure, this does not mean that defendants will be acquitted of all charged offenses or that they will be more likely to assault officers because of this possibility. In all likelihood, such defendants will still be convicted of a lesser included offense that, while still serious, does not carry the same punishment as murder or assault of a police officer.⁵⁹

And then there is the issue of jury nullification. This practice was first noted in England in 1670⁶⁰ and has been part of

57. See *infra* notes 75–77.

58. See Charles McFarlane, *ICE Agents Are Dressing for Anonymity—But the Clothes They Wear Still Tell Us Plenty*, GQ (July 9, 2025), <https://www.gq.com/story/plainclothes-ice-officers> [<https://perma.cc/3ZHT-TYCX>].

59. See *supra* note 47, 52 and accompanying text.

60. See *Trial of Penn & Mead (1670)* 6 Howell's State Trials 951, 953–55, 962–64, 966–67; Alan Schefflin & Jon Van Dyke, *Jury Nullification: The Contours of a Controversy*, LAW & CONTEMP. PROBS., Autumn 1980, at 51, 56–57.

American society since its colonial era.⁶¹ Generally, jurors engage in such conduct when they deem the expected punishment excessive, they view the alleged victim as unsympathetic, or they fail to view charged conduct as criminal.⁶² Given how unfavorably Americans view ICE's current tactics,⁶³ it would not be surprising if a jury acquitted an otherwise guilty defendant as a form of political protest.⁶⁴ While grand juror secrecy laws⁶⁵ prevent this from being confirmed, this likely occurred in the federal government's failed indictment of Sean Charles Dunn, who was arrested for federal assault of a Customs and Border Protection agent by means of a sandwich.⁶⁶ If jurors are refusing

61. See, e.g., JAMES ALEXANDER, A BRIEF NARRATIVE OF THE CASE AND TRIAL OF JOHN PETER ZENGER 78, 93 (Stanley Nider Katz ed., 2d ed. 1972).

62. See LAFAVE ET AL., *supra* note 26.

63. See, e.g., Aaron Blake, *ICE is Quite Unpopular – Even More So than When ‘Abolish ICE’ Was a Thing*, CNN (July 23, 2025, at 07:00 ET), <https://edition.cnn.com/2025/07/23/politics/ice-unpopularity-trump-analysis> [<https://perma.cc/W62A-89DD>].

64. Even if just one juror engaged in such conduct, the case would still result in a mistrial, which is a result prosecutors prefer to avoid.

65. With limited exceptions, federal grand jurors are sworn to secrecy as to what occurs during their proceedings, including the basis of their decisions. See FED. R. CRIM. P. 6(e)(2). So, while it is possible that the grand jury did not have the twelve votes needed to indict, it is similarly possible that they merely asked the prosecutors questions suggesting they would not have those votes if asked to render a decision on the matter.

66. See, e.g., Associated Press, *Prosecutors Fail to Indict Sandwich Thrower in Trump's Washington Public Safety Operation*, CNN (Aug. 27, 2025), <https://edition.cnn.com/2025/08/27/politics/washington-dc-sandwich-thrower-indictment-failure> [<https://perma.cc/M3EK-UKKJ>]. While prosecutors technically could have re-presented the felony charge to another grand jury after the first one failed to indict, the fact that they refiled it as a misdemeanor indicates that even the U.S. Attorney's Office no longer believed that the case warranted prosecution as a felony. See Alan Feuer, *Prosecutors Reduce Felony Charge Against Man Who Threw Sandwich at Federal Agent*, N.Y. TIMES (Aug. 28, 2025), <https://www.nytimes.com/2025/08/28/us/politics/federal-agent-sandwich-charges-dc.html> [<https://perma.cc/TVR7-V75C>].

to find the grand jury's much lower "reasonable cause to believe" standard satisfied, it would not be surprising if they failed to find satisfied the much higher standard of proof "beyond a reasonable doubt." That is exactly what happened when Mr. Dunn's case eventually went to trial as a misdemeanor charge.⁶⁷

The issue remains as to what police officers should do to avoid these pitfalls. First, they should remove their masks and avoid even the slightest accusation that they are trying to conceal their identities while providing the vital service of policing. In so doing, they can help restore trust in law enforcement before it is irrevocably broken. Additionally, this can prevent actual criminals from copying these tactics. When criminals know they are the only ones wearing masks, they should be less likely to use masking as a tactic that attempts to trick victims into believing they are the police. And if jurors are more likely to acquit defendants charged with harming officers where society is less trusting of police, removing the masks should reverse that effect and better protect police victims.

Second, Congress should reevaluate federal laws that do not require prosecutors to prove the defendant's knowledge of a victim's status as a federal agent. As noted by Justice Blackmun in *Feola* in 1975, it was not unfair to defendants that the government did not have to prove such knowledge because these defendants were hardly innocent.⁶⁸ After all, they were trying to sell fake drugs and forcibly steal money from the victims if the deal went south. But immigration enforcement officers' interactions with members of the public are not limited to criminal conspirators like the defendants in *Feola*. Those

67. Zach Montague, *Jurors Find Sandwich Hurler Not Guilty of Assault*, N.Y. TIMES (Nov. 12, 2025), <https://www.nytimes.com/2025/11/06/us/politics/trump-sandwich-guy-verdict.html> [https://perma.cc/F2RF-RLX3].

68. See *supra* notes 42–43 and accompanying text.

defendants were not Andry Hernandez Romero, a gay makeup artist seeking asylum from Venezuela whose only “crime” leading to his deportation was having tattoos.⁶⁹ They were not Jasmine Mooney, the Canadian entrepreneur who was detained by ICE for almost two weeks for the “crime” of “talking to an [immigration] officer about [her] work visa.”⁷⁰ They were not Allison Bustillo-Chinchilla, the twenty-year-old student attending college on a scholarship who was detained by ICE for six months for the “crime” of arriving undocumented in the United States as an eight-year-old.⁷¹ And they were not the unnamed Oregon firefighter who was arrested by Border Patrol for the “crime” of fighting a Washington state wildfire without permanent legal status.⁷² These were not people trying to sell drugs or rob undercover officers. They were people trying to be members of American society.

To account for the various types of defendants that police encounter, Congress should update these laws to match state laws requiring proof of knowledge of the victim’s status. At

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69. Cecilia Vega, Aliza Chasan, Camilo Montoya-Galvez, Andy Court & Anabelle Hanflig, *Trump Administration Deports Gay Makeup Artist to Prison in El Salvador*, CBS NEWS (Apr. 6, 2025, at 19:00 ET), <https://www.cbsnews.com/news/venezuelan-migrants-deportations-el-salvador-prison-60-minutes/> [<https://perma.cc/37LH-3ZQL>].
 70. Jasmine Mooney, *I’m the Canadian Who Was Detained by ICE for Two Weeks. It Felt like I Had Been Kidnapped*, GUARDIAN (Sep. 25, 2025, at 11:03 ET), <https://www.theguardian.com/us-news/2025/mar/19/canadian-detained-us-immigration-jasmine-mooney> [<https://perma.cc/BRB8-KAF9>].
 71. Billal Rahman, *Woman Who Spent Majority of Life in US to Be Deported*, NEWSWEEK (Aug. 29, 2025, at 10:12 ET), <https://www.newsweek.com/woman-who-spent-majority-life-us-deported-2120630> [<https://perma.cc/HZ64-GJVH>].
 72. Martha Bellisle, *Lawyer: Oregon Firefighter Arrested by Border Patrol During Wildfire was on Track for Legal Status*, AP NEWS (Aug. 29, 2025, at 18:43 CT), <https://apnews.com/article/immigration-border-patrol-wildfire-firefighters-8a8e16fe625cb5909d85a436db2caf57> [<https://perma.cc/SVU9-M86L>].

least, that knowledge should be required for all cases except those involving officers serving undercover. This change would still allow jurors to presume knowledge where the officer clearly presented themselves as such, through words, appearance, or both. It would still punish defendants like those in *Feola* as they were punished.⁷³ But it will more appropriately punish defendants in situations where the incident had nothing to do with the victim's status, thereby aligning these crimes more closely with other crimes based on the victim's status.⁷⁴

Conclusion

There is no doubt that serving as a police officer is dangerous to the health and safety of the officer and that officers should engage in lawful conduct to enhance their safety. Despite unsupported claims to the contrary, masking is not the answer. It inhibits society's ability to report officer misconduct, recalls America's history to racist groups like the Ku Klux Klan, and as this Essay argues, paradoxically endangers the officers who mask. The good news is that the solution is simple: unmask. Unmasking will help restore officers' trust with those they swore to protect. It will let people know that *only* criminals wear masks. And when a law enforcement officer is a victim in a murder- or assault-of-an-officer case, it will help ensure that justice is served for the officer and society.

73. The agents in *Feola* were operating undercover, so a knowledge requirement with an exception for undercover agents would not have changed the result in that case. See *United States v. Feola*, 420 U.S. 671, 674 (1975).

74. See *supra* notes 30–31 and accompanying text.

Figure 1.⁷⁵

75. Photograph reproduced courtesy of Nicole Neri and The Minnesota Reformer. Photograph featured in Madison McVan, *Hundreds Protest ICE, Other Federal Law Enforcement Action in Minneapolis*, MINN. REFORMER (June 3, 2025, at 14:12 CT), <https://minnesotareformer.com/2025/06/03/hundreds-protest-ice-in-minneapolis/> [<https://perma.cc/6KCL-UDNV>].

Figure 2.⁷⁶

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76. Still frame from video reproduced courtesy of KTRK-TV Houston and ABC. Video featured in Nick Natario & Shannon Ryan, *Man Arrested After Allegedly Impersonating US Marshal During Attempted Robbery in West Houston*, ABC13 (June 30, 2025), <https://abc13.com/post/houston-man-arrested-allegedly-impersonating-us-marshal-during-attempted-robbery-outside-liquor-store-gessner-harwin/16887818/> [<https://perma.cc/7Q3T-TTAP>].

Figure 3.⁷⁷

77. Drawing reproduced courtesy of artist Ruben Bolling and featured in Ruben Bolling, *Cartoon: Tom the Dancing Bug Shows How to Know Your ICE Agent*, DAILY KOS (July 3, 2025, at 08:30 CT), <https://www.dailykos.com/stories/2025/7/3/2331073/-Cartoon-Tom-the-Dancing-Bug-shows-how-to-know-your-ICE-agent> [<https://perma.cc/8F5M-X2WP>].

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BOLLING

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