

OpJAGAF 2018/10, 25 July 2018, PROHIBITED ACTIVITIES

This is in response to questions received from field commanders about how the Department of Defense and Air Force polices on “extremist” groups apply to Airmen.

Opinion:

At the outset, we are unaware of any case in the recent past where “mere membership” in any extremist organization has been an issue. If it has, it has apparently been addressed satisfactorily at lower levels of command, because questions regarding such membership are not being elevated to this office or our military justice counterparts. In fact, there has been almost a total dearth of cases of any kind involving membership or activities in groups with goals or ideals making them incompatible with military service. The long-standing DoD policy in this area gives commanders considerable flexibility to take appropriate action based on the circumstances of a given case.

For the reasons stated below, we believe it is very difficult for a commander to take administrative or disciplinary action against an Airman who merely belongs to an extremist group unless that Airman is actively participating in the extremist group’s activities in such a way that supports or advocates causes incompatible with military service. The nature of the command response would depend, of course, on the facts of the case and the impact of the membership on morale and discipline. While the current policy does not specifically prohibit “mere membership” in an extremist group, it also provides that consideration “must” be given to membership in these organizations “in evaluating or assigning members.” In other words, mere membership in certain organizations has the potential to have a negative impact on an Airman’s military career.

Policy on Extremist Groups: The Air Force policy on extremist groups is found in AFI 51-903, *Dissident and Protest Activities*, 30 Jul 15, which implements DoD Instruction (DoDI) 1325.06, *Handling Dissident and Protest Activities Among Members of the Armed Forces*, Incorporating Change 1, 22 Feb 12. The policy prohibits military members from actively participating in organizations that advocate supremacist, extremist or criminal gang doctrine, or causes, including those that advance, encourage, or advocate illegal discrimination based on race, creed, color, sex, religion, ethnicity, or national origin or those that advance, encourage, or advocate the use of force, violence, or criminal activity or otherwise advance efforts to deprive individuals of their civil rights.

Active participation includes, but is not limited to, fundraising; demonstrating or rallying; recruiting, training, organizing, or leading members; distributing material (including posting on-line); knowingly wearing gang colors or clothing; having tattoos or body markings associated with such gangs or organizations; or otherwise engaging in activities in furtherance of the objective of such gangs or organizations that are detrimental to good order, discipline, or mission accomplishment or are incompatible with military service.

We note that this list is not all inclusive and other actions, depending on the circumstances, can warrant a command response. Commanders have the authority to employ the full range of

administrative and disciplinary actions, including administrative separation or appropriate criminal action, against military personnel who engage in prohibited activity.

Mere membership in organizations does not necessarily mean that an individual believes in the ideology, or all of the ideology, of the organizations to which they belong. Further the link between membership and action (prohibited conduct) is much more attenuated. For example, an individual who joins a national political party will rarely, if ever, accept all of the party's positions on the myriad of issues which make up today's political agenda. The individual may identify loosely with the platform but have very different views and, at times, even disagree with the organization's position. The impetus for membership can be for social rather than ideological reasons, for the purpose of being exposed to different or diverse points of view, or any other number of reasons, which would not result in the individual taking action in furtherance of the organization's goals. While it may be possible to draw very general conclusions from membership, mere membership does not come close to showing the extent or degree of commitment to the ideology of the organization.

Active participation, on the other hand, regardless how slight, does indicate a degree of commitment and is, consequently, specifically prohibited by policy. An example of active participation would include an Airman who attends a public demonstration in civilian attire to support an extremist group that advocates for discrimination against a group of people based on their race, creed, color, sex, religion, ethnicity, or national origin. Another example of active participation would be an Airman who is a member of an extremist group and uses his off-duty time to recruit new members to this group through any means, including the use of social media websites. These examples are not exhaustive as it would be difficult if not impossible to contemplate all of the ways that an Airman could be violating DoD and Air Force policy on actively participating in activities of an extremist group.

Compounding the problem of dealing with mere membership in organizations that appear to espouse ideologies inconsistent with military service is the issue of what constitutes membership in many of these organizations. By many reports, these organizations tend to be small, transitory, ill-defined as to their purposes and goals, and constantly changing. There is no existing list of organizations in which membership is *per se* prohibited. If there were, the list would be in a constant state of revision as organizations came into and went out of existence. Many of the organizations which may espouse offensive practices have no official charter, constitution, or bylaws, let alone rosters of members or official membership cards. Their purposes and goals can change as rapidly as their leadership. In this context, the concept of membership is itself illusory at best. To the extent that the purposes of these organizations can be defined, the current AFI prohibits any type of active participation. Rather than relying on nonexistent, at this time, and possibly incomplete lists, the AFI focuses on those activities which can be objectively evaluated by commanders. The AFI has, thus, provided commanders with the authority and the guidance to assess various factual situations and to address them regardless of the name of the organization.

Conclusion:

Air Force commanders have the inherent authority and responsibility to take action to ensure the mission is performed and to maintain good order and discipline. This authority and responsibility

includes placing lawful restrictions on dissident and protest activities. An Airmen's mere membership in an extremist group is not prohibited; however, membership must be considered in evaluating or assigning members, and commanders should be vigilant about monitoring Airmen who have identified themselves as members of any extremist group.

This opinion supersedes and rescinds OpJAGAF 1996/65, 1 May 1996.