

CALIFORNIA RACIAL AND IDENTITY PROFILING ADVISORY BOARD (BOARD)

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MEETING MINUTES

March 15, 2023 10:00 a.m. - 2:00 p.m.

Board Members Present: Co-Chair Andrea Guerrero, Co-Chair Abdul Pridgen, Member Angela Sierra, Member Brian Kennedy, Member Chad Bianco, Member Cha Vang, Member DJ Criner, Member LaWanda Hawkins, Member Lily Khadjavi, Member Manju Kulkarni, Member Melanie Ochoa, Member Rich Randolph, Member Sean Duryee, Member William Armaline, and Member Ronaldo Villeda

Subcommittee Members Absent: Member Tamani Taylor

1. Call to Order by Board Co-Chairs

Co-Chair Pridgen called the meeting to order at 10:06 a.m. and handed the floor to Co-Chair Guerrero to open the next agenda item.

2. Welcome and Introductions

Each RIPA Board Member (herein Board) introduced themselves. Co-Chair Guerrero concluded introductions with a welcome to all attending the meeting.

3. Approval of November 29, 2022 Meeting Minutes

Co-Chair Guerrero opened asking if any members would like to discuss the November 29, 2022 draft meeting minutes. Member Hawkins moved to adopt the meeting minutes as presented which Co-Chair Pridgen seconded. All members voted Aye, there were 0 Nay votes, and 0 Abstentions and the meeting minutes were approved as is.

Deputy Attorney General (DAG) Allison Elgart asked the Board to entertain a motion to approve the August 23, 2022 Calls for Service Subcommittee draft meeting minutes. Member Khadjavi noted that the title should be changed from “Policies Subcommittee” to “Calls for Service Subcommittee” for accuracy. Member Khadjavi then moved to approve the August 23, 2022 Calls for Service Subcommittee draft meeting minutes with the change aforementioned which Member Kulkarni seconded. With 15 members voting Aye, 0 Nay votes, and 1 Abstention the meeting minutes were approved as amended.

4. DOJ Presentation About Proposed Amendments to Regulations

Co-Chair Pridgen introduced the agenda item and opened the floor for the Department of Justice (DOJ) to present.

DAG Tanya Koshy presented background information on the regulations to assist with the Board’s discussion today. The RIPA statute specifically directed the Attorney General’s Office to issue regulations to implement requirements it referenced. The regulations went into effect in 2017 and proposed amendments to the regulation were approved in 2022. DAG Koshy stated that they have proposed an additional round of amendments which were submitted to the Office of Administrative

Law (OAL) on March 10, 2023 which would allow the public a 45-day period to provide feedback on the proposals. She stated that the DOJ would hold a public hearing on Thursday, April 27, 2023 at 12:00 p.m. to invite members of the public to provide their oral feedback and comments. She shared that she would then present the proposals referenced to the Board for their specific feedback and invited the Board to select one of its members to provide the Board's comments at the April 27 public hearing.

DAG Koshy stated that the new round of proposed amendments are in response to the California Legislature's passing of Assembly Bill 2773 (AB 2773) which occurred after the amendments initially provided were approved. AB 2773 amended the vehicle code to require officers to state the reason for their stop when making any stops and also amended RIPA statute to require officers to report to the Attorney General's Office the reason given to the person stopped at the time of the stop. Because of the new amendment to the RIPA reporting requirement, it was determined that the new round of proposed amendments are needed.

The first proposed change is to add a new data element that would require law enforcement officers to report the reason given to the stopped person. DAG Koshy stated that the primary reason for this new data element would be to incorporate the change in law and collect what law enforcement officers communicate to the stopped individual. The proposed change would have officers select from 20 different responses which would be treated as data values. Of the 20 responses, one response would allow them to select that they did not communicate the reason for the stop if it was necessary to protect life or property from imminent threat, which was designed to reflect the exception found in AB 2337.

Additionally, the first proposed amendment would be to require officers provide a narrative in the existing narrative field under reason for the stop in two scenarios:

1. When the primary reason for the stop is different from the reason communicated to the person for the stop
2. Where the officer did not communicate a reason for the stop to the person

This would allow law enforcement officers to provide clarification and explain the purpose of their actions. Lastly, the first proposed change would be to include language to explain the reasoning behind the proposed new data element and to better distinguish between the two data elements.

The second proposed amendment would affect the reason for stop data element's language. It would first provide additional explanatory language to violations that have been used inconsistently in reference to traffic stops in an effort to guide internal data analyses. The explanatory language would be parentheticals that would define the violations referenced.

The third proposed amendment would seek to align regulations to existing practices used to report traffic violation stops by removing the following language: "When the person stopped is the driver,..." DAG Koshy stated that under existing regulations, officers are required to characterize these stops as moving, equipment, or non-moving violations when the person stopped is the driver. However, in evaluating stop data entries, it was discovered that officers were characterizing stops

as moving, equipment, or non-moving violations regardless of whether or not the stopped person is a driver.

The final proposed amendment was to revert a portion of the data publication section's use of "personally identifiable information" back to "unique identifying information." DAG Koshy provided background that the 2017 regulation originally used the term unique identifying information and that the 2022 amendment, which proposed use of personally identifiable information, was an oversight. By reverting the term back to its 2017 language would make it consistent with the RIPA statute.

DAG Koshy closed her presentation and invited the Board to provide feedback to the Attorney General's Office and to select a speaker on behalf of the Board to provide an oral comment at the April 27 public hearing.

5. Discussion About Proposed Amendments to Regulations

Co-Chair Pridgen opened the floor for the Board to discuss the proposed amendments.

Member Randolph inquired on whether the proposed amendments were field tested by agencies outside of the tier 1 group. His concern was on whether the changes would subsume an officer's time to patrolling in exchange for additional data entries. Additionally, he asked how the additional data collected would impact the relevant organizations charged with its management.

Supervising Deputy Attorney General (SDAG) Nancy Beninati answered Member Randolph's concerns and noted that the DOJ performed a pilot program, observed officers enter data, and performed ride-alongs with officers to understand the process generally. She also shared that the changes proposed are intended to minimize the impact to law enforcement in response to the statute imposed by the California State Legislature.

Member Duryee shared Member Randolph's concern on the length of time it would take to enter the proposed data elements and offered that the data element "When the primary reason for the stop is different from the reason communicated to the person for the stop" could be a check box rather than a drop down list.

Member Ochoa inquired on whether the removal of the language as proposed in the third amendment presented would introduce more error and asked whether a pedestrian could be cited for a traffic violation. DAG Koshy noted that pedestrians could be stopped for traffic violations per relevant vehicle codes.

Member Ochoa inquired whether further clarity was warranted between the proposed definitions for equipment violations and non-moving violations as "improper condition" and "proper maintenance" language used in the definitions respectively may seem synonymous to each other. Member Duryee agreed with Member Ochoa's comment and stated that the language as proposed would be confusing to both the layman and an officer; an officer with experience would interpret the language to be synonymous. He suggested that equipment violation should include all non-moving violations and that the non-moving violations be categorized to pedestrian, bicycle, or

vulnerable road user violations. Member Ochoa stated that Member Duryee’s recommendation would complement how the data is delineated.

Member Sierra inquired as to how the data would be collected when an officer provides the person stopped a secondary or additional reason for the stop besides what was initially stated (i.e., would this require the officer to complete the narrative field or would they just edit the data field on the reason given to the person stopped). DAG Koshy stated that if the additional reasons for the stop were not communicated to the person stopped, the narrative field would have to be filled out. She further explained that one of the purposes of the narrative field was to capture why there was a difference in response besides capturing the difference in responses.

6. Public Comment

Co-Chair Guerrero opened the meeting to allow for public comment.

Michelle Whittig inquired how a law enforcement officer would validly discriminate or correctly discern a stopped individual’s perceived gender if they are not allowed to ask the individual information on their gender identify. Further it would ask the officer to make a three-part observation that cannot be made without asking the individual as the officer cannot ask the person about their gender identity and will not know the person’s assigned gender at birth. This categorization would make the officer attempt to answer an inherently unknowable question. Therefore, she advocated that an additional category called “unknown” be included to encapsulate the uncertainty officer’s may have.

Karen Glover commented that she would like RIPA to direct their efforts to have law enforcement agencies implement the RIPA data to change their practices rather than spend their efforts on perfecting the data.

7. Voting on Any Recommendations Regarding the Amendments to the Regulations

Co-Chair Pridgen then opened the floor to entertain a motion to adopt the proposed amendments with the following changes as discussed by the Board:

1. For the new data element of Reason Given to the Stopped Person, the Board proposes adding a data value of “Same as the primary reason reported under Reason for Stop” to account for scenarios where an officer’s primary reason for the stop (as reported in the Reason for Stop data element) is the same as the reason communicated to the stopped person.
2. The distinction between equipment and moving violations is not clear from the proposed definitions under the data value of Traffic Violation. The Board proposes to combining the equipment violation and non-moving violation secondary data values under Traffic Violation and creating a third secondary data value of “Violations not involving Vehicles (e.g., pedestrians, bicyclists or vulnerable road users)”

Member Hawkins asked the Board to consider whether the proposed amendments and discussion could be consolidated into one data field rather than multiple data fields with dropdown lists. Member Ochoa agreed that convenience to officers should be considered but suggested to ensure that changes to simplify the process do not undermine the Legislature’s intent behind the statute.

SDAG Beninati shared that the Stop Data subcommittee did consider whether to collect the DOJ's first proposed amendment without the need for multiple data values, but it was not feasible.

Member Ochoa stated that in regards to the Board's second proposed change that further definitions may need to be developed to explain terms like "vulnerable road user" and to properly encapsulate and correctly categorize individuals using alternative transportation such as skateboards. Member Khadjavi asked the Board to consider separating bicyclists from the third category of the Board's second proposed change as there are substantive differences to what bicyclists and pedestrians could experience during a stop.

Co-Chair Guerrero moved to adopt the Board's first discussed change to the DOJ's proposed amendments. Member Duryee seconded the motion. There were 15 Ayes, 0 Nays, and 0 Abstentions. The motion passed.

Co-Chair Guerrero moved to adopt the Board's second discussed change to the DOJ's proposed amendments. Member Sierra seconded the motion. There were 15 Ayes, 0 Nays, and 0 Abstentions. The motion passed.

Member Sierra moved to direct the DOJ to draft a letter to be signed by the Co-Chairs which and Co-Chair Pridgen seconded. There were 14 Ayes, 0 Nays, and 1 Abstention. The motion passed.

8. Break

Co-Chair Guerrero commenced the scheduled break. After the break, Co-Chair Pridgen moved the meeting to the next agenda item.

9. Department of Justice Update

DAG Elgart presented the outline created for the 2024 RIPA Report. She stated that the Board's subcommittee meetings developed the topics present in the outlines and that the Board would have an opportunity as a whole to provide feedback.

DAG Elgart informed the Board of the two proposed draft letters from the Policy Subcommittee regarding SB 50 and AB 93 which were bills that are being considered in the Legislature and cover pre-text stops and consent searches respectively.

10. Board Discussion About 2024 Proposed Outline and Subcommittee Reports

Co-Chair Guerrero opened the floor for the Board to discuss the proposed 2024 outline and meeting materials circulated for this meeting. Co-Chair Guerrero commented that the proposed outline took the Board's efforts in a good direction as it began to look at actionable information to address racial identity profiling that they are mandated to do.

Member Ochoa thanked the DOJ for the proposed outline and echoed Co-Chair Guerrero's sentiment. She recommended that a section on traffic would be beneficial in the stop data section of the report. Particularly, having information compartmentalize to cover moving vs. non-moving violations, common infractions that are the basis for stops, etc. would provide a holistic picture as traffic stops account for over 80% of the stops for some agencies.

Member Ochoa commented on the use of force analysis proposed for the racial disparities section. She asked that the section be checked by the URSUS (AB 71) data prior to resuming work on this it as prior analyses with four of the major jurisdictions in the state generated inaccurate data that could not be reliably used. Member Khadjavi agreed that assessing the data's validity will be needed.

For the policy and accountability section, Member Ochoa recommended that the section also discuss the accountability and accuracy of the data as the Policy subcommittee and members of the public have shared their concerns about ensuring its reliability. She reminded that RIPA data is heavily used in litigation and advocacy. She also stated that the section should also address how to rectify inaccurate data reporting as well. On the POST outline section, Member Ochoa also asked that information on POST's compliance with the law be added as the POST subcommittee had strongly urged in favor of its inclusion. Particularly, she wanted the section to cover POST's statutory obligation to create guidelines on racial profiling and noted that relevant POST material created was out of compliance.

Member Randolph thanked the Board members for the discussion and collaboration. He shared that actionable recommendations made now may be premature given that recommendations made have source data from Tier 1 agencies with more data incoming. Additionally, Member Randolph stated that he thought the Board should require some degree of experiential learning or training for all its members to bridge knowledge gaps. He stated that the board members experience the training as peace officers have as it could complement their understanding and answer some questions the Board members have. Further he stated that this form of interaction with the subject matter would only provide additional credibility that the Board is objective in its efforts.

Member Randolph also questioned the review process of subcommittee content. Although he credited the DOJ for their punctuality and efforts, he inquired whether there could be opportunity to review proposed subcommittee recommendations prior to its presentation at full board meetings.

Co-Chair Pridgen inquired whether former member Steve Raphael's suggestion to describe public safety concerns and decision-making process to identify them would be included in the 2024 RIPA report. Lastly, Co-Chair Pridgen suggested that the report also cover what California as a state could do to ensure accountability.

Member Sierra thanked the subcommittees and the DOJ for their work. She encouraged stakeholders (e.g., members of the public and law enforcement) to provide their comments to the subcommittees and the Board to better develop the content of the report as it is developed. She also supported the outline's inclusion of unions and collective bargaining as topics in the accountability section. She stated that coverage of the topics could identify effects that collective bargaining has on accountability.

Member Hawkins stated that Member Randolph's invitation to experience the training was helpful, as she identified there were opportunities to improving trainings provided by POST. She also asked the Board to consider the POST subcommittee's request to draft and send a letter to POST and the Museum of Tolerance regarding updating trainings discussed in 2022 as the aforementioned have not been updated in 20 years. She also asked the Board to consider the POST subcommittee's

request to send a letter to Legislature seeking clarification on whether the Museum of Tolerance is the only organization able to teach the training discussed.

11. Public Comment

Co-Chair Pridgen opened the floor for public comment.

The first public commenter, Hector, stated he was glad to see qualified immunity topic will be covered in the 2024 report. He stated that when police are immune to civil lawsuits the public is left without a recourse for the harm done to them.

The next public commenter, Vivian, commented that the Board should continue its work on use of force that results from pretext stops in order to end the violence and death caused as a result.

Aaron reiterated that the Board should focus its efforts on use of force from pretext stops.

Chavez urged the Board to review unions and collective bargaining as a topic of the 2024 report and its effects on accountability. She stated that although the right to collective bargaining is a fundamental right it should not interfere with the right to justice.

Michelle Whittig commented that the Board should review consensual searches. Particularly, she asked the Board to explore an officer's capability to initiate a consensual search when it is "implied by conduct." She stated that the term is vague and unduly permissive.

Eva Bitran urged the Board to consider approving the AB 93 support letter as the recommendations found within are aligned by the research driven and data supported recommendations made by this board. She also stated that the Board's goal is not just to issue reports but to effectuate change and eliminate bias.

Michelle Whittig shared concern on sentiments held by members of the Board that imply officer safety trumps all other considerations. Although those risks deserve substantial weight they should not obviate or disregard the right of the public to their constitutional right of equal protection.

The final public commenter, Angelica, asked the Board to support the letters and shared that consideration of officer safety should not trump all other considerations.

12. Discussion of Next Steps and Any Action Items

SB 50 Letter

Co-Chair Guerrero asked the Board to consider a motion to approve the Policy Subcommittee's draft letters to the Legislature regarding SB 50 and AB 93. The drafted SB 50 letter is addressed to Senator Bradford and expresses support for the bill, but recommends that the bill be amended to address and incorporate the Board's recommendations to eliminate pretext traffic stops and searches. She noted that the letter cites both the Board's report recommendations, President Biden's Executive Order calling for an end to pretext stops, and directs Senator Bradford to consider a bill in Congress that would create a program that would award municipalities with funds to assist in development of Civilian Traffic Enforcement. She opened the floor for discussion on the drafted SB 50 letter.

Member Duryee prefaced that although he is opposed to pretext stops, he is not in favor of sending the letter at this time as the language of the bill would make it harder to enforce vehicle code related violations such as equipment violations which could unintentionally affect traffic safety in the California.

Member Ochoa asked the Board to consider being in favor of sending out the letter. She reminded the Board that the specific provisions which could present limitations on basis for stopping would be decided by Legislature and not the Board. She also stated that SB 50 addresses concerns had on traffic safety measures by not precluding counties, cities, and municipalities from enforcing a violation provided in the relevant code through government employees who are not peace officers; SB 50 allows jurisdictions to enforce traffic safety measures through other means. Member Duryee acknowledged that while alternative traffic safety enforcement was considered in SB 50, that the alternative would not be available for California Highway Patrol and place a limitation on traffic safety enforcement.

Member Bianco shared Member Duryee's concerns and stated that he would not be in favor of sending the SB 50 letter. He raised concern on non-peace officers enforcing traffic safety measures as he reminded the Board that the task can be dangerous for the individual enforcing the vehicle code. Additionally, he stated that SB 50 is flawed as it would affect the ability to enforce the law generally and urged the Board to not support sending out the letter.

Member Sierra inquired whether the SB 50 letter could be modified to simply state RIPA's recommendations germane to what the bill would address for example, a letter not in support of the bill but rather elevating the Board's recommendations relevant to the bill for consideration. She stated that it was important to have the Legislature aware of the Board's recommendations as they develop bills and policies.

Co-Chair Pridgen facilitated discussion by stating that the Board's goal is to reduce disparate outcomes with little impact to public safety. He reminded the Board of alternatives that can be done in addition to sending letters of support of relevant legislation; the Board has identified best practices implemented by law enforcement agencies for example, moving to a probable cause standard for stops, and has elevated those practices in their report. He stated that with due diligence and review of the additional data received from smaller agencies which have begun their RIPA reporting, the Board can continue to identify best practices that reduce disparate outcomes with little impact to public safety.

AB 93 Letter

Co-Chair Ochoa also asked the Board to consider a motion to approve the Policy's Subcommittee's draft letter to Legislature in support of AB 93 which would eliminate consent searches and require probable cause for searches. She stated that the letter would restate the position of the Board to end consent searches and elevate the additional recommendations related to searches. She opened the floor for discussion on the AB 93 letter.

Co-Chair Pridgen stated that the Board specifically recommended that the Legislature, law enforcement agencies, and district attorneys examine emerging approaches including prohibiting

certain searches. He stated that the language found in the AB 93 letter was not consistent with the Board's recommendation as it supported eliminating certain searches rather than to examine them. Member Bianco shared Co-Chair Pridgen's concern that the letter's language may not holistically align with the Board's recommendation. He suggested that to better ensure its alignment to their position, that it may be better for Board members to draft the letter rather than direct the DOJ to do so. Co-Chair Guerrero provided clarification, that the letter and its content was sourced by the Policy Subcommittee as the DOJ was only directed to draft the letter, but not generate its content.

Member Khadjavi stated she was in support of sending the AB 93 letter as it aligned with recommendations made throughout the Board's report. She also noted that the recommendations made were substantive due to the inter-professional experience Board members provided with their experience. Member Randolph expressed an interest in a more concerted effort to create recommendations holistic of the Board's experience. He stated that the experience law enforcement board members had was underutilized. Member Ochoa agreed with Member Khadjavi's sentiments. She stated that the Board's composition ensured that stakeholders normally excluded from the improvement process are able to participate.

Member Randolph had concerns on particular references used in both letters under consideration for approval; he stated that information on training practices in Kentucky and Connecticut do not translate to practices conducted in California.

Member Duryee stated that he would be abstaining from the vote on the letters today as he had concerns on unintended impacts they may have on CHP's handling of pedestrians encountered in freeways.

Member Kulkarni moved to approve and send the SB 50 letter as currently written. Member Khadjavi seconded the motion. With 8 Ayes, 3 Nays, and 1 Abstention the motion passed.

Member Kulkarni moved to approve and send the AB 93 letter as currently written. Member Sierra seconded. With 8 Ayes, 2 Nays, and 2 Abstentions the motion passed.

Next Steps

Co-Chair Pridgen stated that the Board's next steps are to present the Board's two amendments of the DOJ's proposed regulations changes. SDAG Beninati stated that the DOJ would take the Board's changes and draft letters for the Co-Chairs signature. Additionally, based upon the Board's direction today, Co-Chair Pridgen informed that the AB 93 and SB 50 letters would be sent to the respective Senator and Assembly Member.

Co-Chair Guerrero relayed that as the letter to POST was not voted on that the POST Subcommittee continue its work on it at their next meeting.

Before adjourning, Co-Chair Guerrero invited members of the public to continue their participation at RIPA meetings. She also reminded that the progress made is in partnership between community leaders, law enforcement leaders, and affected communities. She also thanked the DOJ for their continued efforts in the process.

SDAG Beninati added that the DOJ's function in these proceedings is to staff the Board. She stated that DOJ actions and efforts are on behalf of the Board as agreed and voted on by the Board's members. She added that all meetings are conducted in public and that work is mainly done at subcommittee meetings and normally reported on at full board meetings.

13. Adjourn

Co-Chair Guerrero thanked all for their attendance and adjourned the meeting.