

# CALIFORNIA RACIAL AND IDENTITY PROFILING ADVISORY BOARD (BOARD)

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## POLICIES SUBCOMMITTEE MEETING MINUTES

**February 27, 2023 10:15 a.m.**

**Subcommittee Members Present:** Co-Chair Andrea Guerrero, Member Melanie Ochoa, Member Lily Khadjavi, Member Angela Sierra, Member Manju Kulkarni

**Subcommittee Members Absent:**

### **1. Introductions**

Co-Chair Guerrero called the meeting to order at 10:15 a.m. Each Policies Subcommittee member (herein subcommittee) introduced themselves. Co-Chair Guerrero concluded introductions with a welcome to all attending the meeting.

### **2. Approval of September 30, 2022 Subcommittee Minutes**

Member Khadjavi moved to approve of the draft meeting minutes as is. Member Ochoa seconded the motion. With four Ayes, zero Nays, and zero Abstentions, the motion passed.

### **3. Overview by Department of Justice**

Deputy Attorney General (DAG) Allison Elgart of the Department of Justice (DOJ) introduced the categories the subcommittee could cover for their portion of the 2024 report:

- Accountability;
- Pretext Stops;
- School-Based Policing/Law Enforcement in Schools; and
- Youth Interaction with Law Enforcement

Chair Guerrero opened the floor to the subcommittee to express ideas and topics they would like to explore for the next report. Member Ochoa asked the subcommittee to consider some of their report section be dedicated to addressing potential unreliability in data reporting –particularly on how the data should be audited – which would complement the Stop Data Analysis subcommittee’s efforts in insuring data integrity. Member Khadjavi, as a member of the Stop Data Analysis subcommittee, concurred with Member Ochoa’s suggestion and stated that covering the topic in the Policies subcommittee’s section would not be a duplicative effort should the Stop Data Analysis subcommittee equally explore the topic. DOJ DAGs then presented on particular topics the subcommittee could approach from the report section categories.

#### **Accountability**

DAG Jennifer Soliman presented on accountability topics that the subcommittee could cover in their report section. In last year’s report, the RIPA Board (herein Board) covered accountability mechanisms and asked the subcommittee to consider continuing on the topic in this year’s report by evaluating the efficacy of these tools. DAG Soliman identified five germane subject areas and

noted holistic coverage of all five subject areas would be a multi-year endeavor. The first subject area for consideration as an accountability mechanism would be law enforcement's relationship with its community and how this relationship could engender support for alternatives to use-of-force practices. Second, the subcommittee could explore the relationship between law enforcement and its related municipality. In particular, the leverages both parties have (e.g., police unions, police bill of rights, funding, etc.) could be reviewed to see how they are used during bargaining. Third, DAG Soliman asked the subcommittee to consider review of discipline and training throughout the chain of command. She explained punitive or education-based paradigms that could be explored to determine their efficacy. Fourth, the subcommittee could consider qualified immunity and its efficacy as a state and federal protection and referenced that Colorado has created a state-level civil suit whereby individuals could sue and qualified immunity would not be a defense. Last, DAG Soliman asked the subcommittee to consider evaluation of early intervention systems as a preventative, rather than a reactive, measure.

### **Pretext Stops**

DAG Micklethwaite presented on pretext stop topics that could be included in this year's report. DAG Micklethwaite noted that last year, the Board made several recommendations, one of which encouraged the cessation of all pretextual stops and searches in favor of the probable cause standard. They first noted that the subcommittee could report on how individuals are impacted by use-of-force during pretextual stops. They then shared that the subcommittee could evaluate related policies that have been passed. Additionally, DAG Micklethwaite stated that the subcommittee could report on why pretext stops are occurring in the first place. Another topic that could be developed was hot spot policing, specialized police forces (e.g., SWAT), and the War on Drugs' impact on pretext stops.

The last suggestion was that the subcommittee could follow up on updates related to civilian traffic enforcement as the Board did prior work on this topic last year. In closing the presentation, DAG Micklethwaite shared that California State Senator Steven Bradford introduced SB 50, which would eliminate stops made for five vehicle code sections unless there was a suspicion of another crime. DAG Micklethwaite stated that the Board as a whole could potentially write a relevant letter that could support expanding SB 50's coverage to other relevant vehicle code sections or to eliminate pretext stops like the Board recommended previously. DAG Micklethwaite also mentioned there is another bill, AB 93, that would eliminate consent searches without suspicion of a crime, for which the Board could also decide to write a letter.

### **Youth Interaction with Law Enforcement**

DAG Yasmin Manners opened the presentation noting that the Board has reported on law enforcement's interactions with youth generally outside of the school context. The Board uncovered a disparity in which youth with disabilities were subjected to increased law enforcement interactions and experienced different outcomes. She asked the subcommittee to consider the interplay between youth with disabilities and their interactions with law enforcement; the Board could delve deeper into the RIPA data particular to this demographic with an intent to recommend best practices for law enforcement to use. Lastly, the Board could also report on the different types

of disabilities and how they interact with law enforcement and whether there are qualitative differences.

### **School-Based Policing/Law Enforcement in Schools**

Associate Governmental Program Analyst (AGPA) Anna Rick noted that the Board discussed their findings about school-based policing and school referrals to law enforcement in the 2023 report. AGPA Rick summarized that the Board found that:

- School-based policing was introduced during school segregation and has since become a norm;
- In recent decades the presence of law enforcement in schools has increased greatly;
- Most school-based police work is contracted; and
- There were disparities in school referrals to law enforcement in students who were Black, Latine(x), or students with disabilities

As a result, the Board emphasized the importance of creating policies and laws that account for the vulnerability of children and youth and would review policies and best practices to inform the development of the 2024 report.

AGPA Rick stated that, as a report topic, the Board could explore the RIPA data specific to this topic and review the findings and recommendations from California school district investigations with respect to school-based policing.

Before closing the agenda item, Chair Guerrero thanked the DOJ for their presentations and moved to the next agenda item.

### **4. Board Discussion Regarding State & Local Policies Chapter in the 2024 Board Report**

Chair Guerrero opened the floor to the subcommittee to allow discussion of what topics would be worked on for this year's report. Member Khadjavi expressed interest in the subcommittee's potential review of qualified immunity, stating that it was a novel topic.

Member Sierra expressed that the potential amount and depth of topics seemed too large to be completed in one report and recommended that the subcommittee only focus its work on two to three topics to ensure adequate coverage of those selected. She expressed interest in a review of police unions, bill of rights, and police contracts and the discipline and training topics; she shared that the two topics would need to be reviewed in tandem as they seemingly are crucial in understanding the other. Additionally she noted that the topic of early intervention systems could be reviewed as well. On the topic of pretext stops, Member Sierra noted interest in exploring why pretext stops occur, with consideration as to SB 50 and why the selected vehicle codes were chosen. With respect to the youth category, she thought that review of how various disabilities may qualitatively differ in interaction/outcome with respect to law enforcement policies could be included for this year's report.

Member Ochoa concurred with Member Sierra's thoughts on police unions, contracts, and their bill of rights as it would provide insight on accountability at the local level. However, she thought

that review of discipline and training of law enforcement across the chain of command would be too cumbersome as practices can vary greatly across agencies. She also recommended they review qualified immunity as a topic of the report as it could lead to clear recommendations and mentioned that the state of New York has similar developments as Colorado. The subcommittee could examine the purpose of qualified immunity and whether it is being applied to situations correctly. As to the pretext stop section, Member Ochoa thought that the RIPA data was not sufficiently reliable to perform an in-depth review on use-of-force analysis, but did recommend that they move forward with sending letters in support of legislation consistent with the Board's recommendations. As to the Youth report section, she recommended that the subcommittee cover the impact field interview cards may have on youth's trajectory.

Member Khadjavi endorsed coverage regarding the potential of civilian traffic enforcement. She acknowledged that although state application of this program may still be in its inchoate stages, raising this topic would help offer alternative solutions. Regarding the report section on youth, she recommended continued review of disparities found in law enforcement stops on youth, especially as more relevant RIPA data is submitted.

Chair Guerrero echoed Members Ochoa and Khadjavi's sentiments that the section should provide concrete, actionable recommendations to the state Legislature. Chair Guerrero considered coverage of the police unions as a topic of interest. She recognized the nuance of the topic in that potential recommendations would need to recognize the right of collective bargaining but also protect and recognize the community's civil rights. Chair Guerrero suggested the subcommittee review qualified immunity as a topic. As another recommendation for their accountability section, Chair Guerrero asked the subcommittee to consider review of non-compliance as there is sufficient concern to cover it in the 2024 report. As to the subcommittee's section on pretext stops, Chair Guerrero suggested review of use-of-force during pretext stops as a topic of interest. In regards to the youth section, she noted that with the RIPA data collected, an in-depth review of policing in schools could provide good findings to develop recommendations. Lastly, Chair Guerrero asked the subcommittee to consider whether sending letters in support or against bills would be appropriate considering how they would be subject to changes during the legislation process; however, she did think sending letters that had the Board's recommendations for consideration would be appropriate. Member Kulkarni shared her interests and suggested that the subcommittee's report section should focus on use-of-force during pretext stops, school resource officers in the school setting and how to better ensure the RIPA data collected becomes more reliable.

Chair Guerrero then invited subcommittee members to provide their closing thoughts and suggestions in light of the discussion had. Member Ochoa stated that another avenue to explore would be the length of pretext stops and whether there were observable findings to discover. Additionally Member Ochoa clarified that letters in support of legislation have been sent out by the Board in the past and that the action would help expressly encourage policies to form with consideration of the Board's recommendations.

Chair Guerrero moved to have DOJ staff draft a letter subject to the full Board's approval at the upcoming Board meeting that supports AB 93 and SB 50 and urges the Legislature to fully recognize the recommendations of the Board as expressed in the most recent report. Member Sierra seconded the motion.

With five Ayes, zero Nays, and zero Abstentions, the motion passes. Upon its passing, Supervising Deputy Attorney General Nancy Beninati informed the subcommittee that the DOJ would work with Chair Guerrero to draft the letter.

## **5. Public Comment**

Chair Guerrero then opened the floor for members of the public to provide their comments in today's meeting.

Michele Wittig applauded the Board's willingness to take on the topic of pretextual stops and hoped that they would engage with SB 50 and AB 93 as the proposed changes would directly affect the cost-benefit analysis that law enforcement agencies subscribe.

Chair Guerrero closed public comment and thanked members of the public for their attendance at the meeting.

## **6. Election of Co-Chair**

Chair Guerrero invited nominations for the available Co-Chair position. Member Kulkarni nominated Member Ochoa for Co-Chair. Chair Guerrero nominated Member Kulkarni for Co-Chair. Member Ochoa accepted the nomination but Member Kulkarni declined. Chair Guerrero then moved to vote:

With four Ayes, zero Nays, and zero Abstentions, Member Ochoa was selected as the Co-Chair of the subcommittee.

## **7. Discussion of Next Steps**

DAG Soliman started the agenda item by confirming that the subcommittee's direction for the accountability section was to focus its efforts covering police unions and contracts, qualified immunity, and compliance with the RIPA Act and associated data.

Member Ochoa stated that to ensure substantive recommendations were made that it would be best to deprioritize coverage of police unions and contracts as there may be no actionable recommendations that could be developed. She stated that it may be impossible to develop a recommendation that the Board would wholly support. Chair Guerrero recognized that although this subcommittee has not yet explored the topic, it may nevertheless be worthwhile for the DOJ to provide some report back on it as the subject has been elevated and recognized on a national and state level. Member Sierra concurred with Chair Guerrero and informed that a recommendation did not necessarily need to be developed until further review. Member Ochoa then asked that the subcommittee's attending members be polled to identify topics the subcommittee holistically wanted to cover.

After the subcommittee polled itself, DAG Soliman announced that consensus was in support of qualified immunity as a topic. Chair Guerrero then directed the DOJ to account for today's discussion to further identify additional accountability topics that the subcommittee had consensus on while also considering its capacity to cover the chosen topics.

## **8. Adjourn**

Before the meeting adjourned, DAG Elgart invited all to the upcoming RIPA meetings. Co-Chair then thanked all for their attendance and wished all a good day before adjourning the meeting.