

# CALIFORNIA RACIAL AND IDENTITY PROFILING ADVISORY BOARD

## MEETING MINUTES

### **Third Meeting of the Racial and Identity Profiling Advisory (RIPA) Board**

**Thursday, January 26, 2017, 10:00 a.m.**

**Downtown Business Hub**

**Fresno Area Hispanic Foundation**

**1444 Fulton Street**

**Fresno, CA 93721**

The third meeting of the California Racial and Identity Profiling Advisory (RIPA) Board was held on Thursday, January 26, 2017 at 10:00 a.m. at the Downtown Business Hub of the Fresno Area Hispanic Foundation, 1444 Fulton Street, Fresno, CA 93721.

**Members Present:** Honorable Micah Ali, Oscar Bobrow, Pastor J. Edgar Boyd, Sahar Durali, Michael Durant, Jennifer Eberhardt, Kelli Evans, Commissioner Joe Farrow, Andrea Guerrero, Alex Johnson, Honorable Alice Lytle, Mariana Marroquin, Reverend Ben McBride, Chief Edward Medrano, Sheriff David Robinson, Angela Sierra

**Members Not Present:** Douglas Oden, Tim Silard, Timothy Walker

**California Department of Justice Staff Present:** Nancy A. Beninati, Supervising Deputy Attorney General, Civil Rights Enforcement Section (CRES); Catherine Z. Ysrael, Deputy Attorney General, CRES; Shannon Hovis, Senior Policy Advisor, Executive Office; Audra Opdyke, Assistant Bureau Chief, Bureau of Criminal Identification and Investigation Services, CJIS; Charles Hwu, Manager, Criminal Justice Information Technology Services Bureau, CJIS; Erin Choi, Manager, Client Services Program, CJIS.

### **1. Call to Order and Welcoming Remarks**

The meeting was called to order at 10:05 a.m. by Kelli Evans. She expressed gratitude to the various groups present at the meeting, including board members, community members, and law enforcement. She also thanked the people who had been present at earlier meetings in Oakland and Los Angeles. She acknowledged the work of the Attorney General's office in drafting the regulations, and then explained that the public comment period would be moved up in the agenda so that the board could hear those comments before making recommendations.

### **2. Approval of the Minutes of the October 24, 2016 Meeting**

**Motion:** A motion was made by Member [unseen] and seconded by Member Guerrero to approve the minutes of the October 24, 2016 meeting of the RIPA Board. The motion passed by a voice vote of all members present, Members Eberhardt and Marroquin (who were not present at the October 24 meeting) abstaining.

### **3. Presentations by the Department of Justice on Proposed AB 953 Regulations**

Ms. Beninati, DOJ, thanked those present for attending and explained that there are two separate proceedings – that comment at the Board meeting reflects input for the Board only, and if individuals would like to submit their comment to the Attorney General’s office on the proposed regulations, they may do so by mail or email by 5:00 p.m. on January 27 or by giving official public comment at the public hearing following the Board meeting.

Ms. Ysrael, DOJ, gave a presentation on the proposed AB 953 Regulations. Ms. Ysrael gave an overview of the proposed regulations, then reviewed certain data elements that were noted by the public, and finally reviewed special settings that triggered different reporting obligations under the regulations.

The proposed regulations are comprised of six articles: (1) definitions; (2) description of which agencies are subject to reporting; (3) specific data elements that must be reported for each stop; (4) description of reporting requirements for both “regular” and special settings; (5) technical aspects of reporting and methods by which an agency can submit data; and (6) description of audits by the Department of Justice to ensure that reported data is accurate. Ms. Ysrael explained the categories of data specified in the statute, the additional data elements that the proposed regulations include, as well as the data elements that were considered but not included in the proposed regulations. Ms. Ysrael went through the various categories that an officer would be required to report on, including the data values/options from which an officer can select when completing each data element, in order to ensure uniformity in reporting, as required by AB 953.

The presentation then covered special settings, which represent unique situations for which the threshold for reporting is heightened to when an officer takes a specific action during the stop or reporting requirements are distinct. These settings include public safety or emergency situations; programmatic searches or seizures; passengers in vehicle stops; searches or arrests subject to warrant or search condition in a home; interactions during home detention or house arrest assignment; and interactions in K-12 public school settings.

Ms. Ysrael reiterated the manner by which members of the public may submit comments on the proposed regulations.

#### **➤ Questions from Board Members**

Co-Chair Medrano noted that the list of officer actions taken during a stop had been expanded beyond the Board’s recommendations, to include actions concerning use of force that were not required to be listed by the statute. Ms. Ysrael explained that the statute specifies the category, “actions taken by officer” and then says, “including but not limited to” which means the legislation contemplated that the regulations would add to this category. Ms. Hovis elaborated that for all of the required data elements, or categories of information, it was left to the discretion of the Department what options would be presented.

Member Durali noted that in the Special Circumstances Subcommittee, the members had recommended that stops continue to be defined in the way they were in general situations. She asked whether a more restrictive definition for K-12 stops had been adopted in the proposed

regulations. DOJ staff explained that students' movements are already restricted in school settings, and so the Department had adopted a more workable definition of stops for reporting purposes.

Member McBride asked about the "community caretaking" category of police action, and what would be included in that field. He also asked about the use of K-9s, and whether their use would be reported only "in apprehension" and not whenever a K-9 was brought out of a vehicle. Co-Chair Medrano noted in response that K-9s are used in situations such as in airports or during bomb threats, and therefore are not always deployed for the purpose of a stop. Member Durant noted that reporting every time a K-9 was used would become monotonous. Ms. Beninati explained that the "community caretaking" category was meant to encompass situations in which no one was arrested, such as when someone's car broke down on the side of the road and was driven home by police. Co-Chair Medrano defined "community caretaking" activities as non-enforcement activities or simply providing service. Ms. Beninati cited the definition of "community caretaking" in the proposed regulations.

Member Guerrero asked about the category "person taken into custody" under "result of stop." She wanted to know that where the regulated stated "referred to U.S. Customs and Immigration Service" if the drafters meant to write "the enforcement arm of the Department of Homeland Security." The Department of Justice noted that this was a typographical mistake and would be corrected.

Member Eberhardt, who was on the Data Elements Subcommittee, wanted to know why for "type of stop," the data value of "officer initiated" under was removed. She also noted that the Subcommittee had discussed having narrative fields for reasonable suspicion under "reason for stop" and wanted to know why that had not been included. She additionally wanted to know why fields for the race, gender, and age of the officer had not been included. Ms. Beninati responded that there were several categories of elements that had been considered, but that the Department did not include in the current version of the regulations, in order to balance stakeholder interests. She commented that all categories can be revisited.

#### **4. Comments from the Public**

Greg Jones/Inland Congregations United for Change applauded the diversity of the Board and asked how many Board members had actually voted for AB 953. He questioned how the Board expected the public to fairly trust their implementation of a law that they had not voted for.

Pastor Aaron D. Pratt/Inland Congregations United for Change and Second Chance Lives Reentry spoke as a veteran and a decorated Navy SEAL, saying in the armed forces he policed abroad and took an oath to treat people humanly, and did that. Mr. Jones commented that in the U.S., he's afraid to drive. He questioned why we can't along and do what's right, and asked the Board, can we hold the police accountable as a community with you?

Victoria Castillo/Faith in the Valley read a section of the Merced Police Department's policy on racially-biased policing. She then read from a citizen's complaint that she had helped another individual file. The complaint expressed being dehumanized and requested several disciplinary

actions for specific officers, including a referral for them to participate in implicit bias and cultural competence training.

Kena Cador/Equal Justice Works Fellow at the ACLU of Northern California spoke of the concerns that the ACLU and other advocacy groups had about the proposed regulations, particularly the failure to include open text fields with respect to the categories “reason for stop” and “basis for search,” as well as any data value than refers to “other.” She spoke for the need for more detail in officer reporting in several categories.

Pastor Trina Turner/Faith in the Valley was concerned about the use of “other” as a data point, noting that it provides the opportunity to hide data. She asked that all “other” categories include a required write-in so the officer specifies what is meant by other.

Melissa Mondragon spoke about her son, who was first arrested at age 16 and has been in and out of juvenile hall and jail ever since. She said that because he was in juvenile hall, he was unable to be educated or graduate high school. She said that he and many others ended up homeless and on drugs because of the lack of proper education and counseling.

Terrence Stewart/Inland Congregations United for Change said that he was born into racial profiling, and the first time he was stopped by police he was 9 years old. He commented that every time he was stopped, a gun was pulled on him, and eventually he was caught with marijuana and sent to jail; he has since earned a Master’s degree. He asked law enforcement to invest to fix the system and not profile.

Josh/Faith in the Valley Kern said that Kern County had the deadliest police in the country. He said that a 73-year-old man with dementia had been shot seven times by the police because he had a crucifix in his pocket that was mistaken for a gun. He commented that the data needed to be collected, not for the benefit of community members, who know what’s going on, but for the Board and others to see and create policies to save lives.

Stacey Williams spoke of her children and husband, who are black, and therefore feel as though they make her less safe when they travel together. She commented that these are not check boxes, these are families.

Denise Friday Hall spoke of her son, Colby Friday, who was shot and killed by a Stockton police officer. She commented that she had taught her children how to respond to directions from police. She said that she did not believe officers should have the responsibility of turning their own body cameras on; that the officer who shot her son did not have his camera on. She asked why her son had been killed, and showed pictures of his five children to the Board.

The next woman to speak said that in Fresno, African Americans are 216% more likely to be stopped by police than any other race. She asked that law enforcement collect as much data as possible to eliminate racial profiling.

Toni McNeal spoke on an incident in which she and a friend had reported the beating of a woman to the police. She said that the officer who responded to her call had hit her friend with

his car; the officer thought she and her friend were the perpetrators. When she ran from the police, the officer brandished his gun at her and ordered her to stop.

Jabari Holder/PICO said that he wanted to call attention to stop-and-frisk procedures. He said that anti-loitering laws were an excuse to harass people and invasively search them for drugs. He said that collecting the data would hold law enforcement accountable for their actions.

Pastor Curtis Smith/Faith in the Valley San Joaquin said he wished to speak as a moral compass, because he believed the Board should feel the heartfelt testimony of those who had spoken. He said that the country had elected as president someone who wanted to dismantle progress in policing and instate stop-and-frisk. He said that data collection was necessary to preserve that progress.

Jesse Orellanos/Merced Brown Berets spoke about his work throughout California and Arizona in the wake of police violence. He spoke about his two adopted sons, who are black, and the fact that a black person in Merced is four times as likely to be arrested as a white person. He said he wanted effective policing and commented that youth are afraid of law enforcement, which must change to have healthy communities.

Irene Amaderas spoke on behalf of her brother, who had been diagnosed with schizophrenic tendencies. She said he had been harassed by police and eventually arrested, and that her family was now trying to get him into treatment rather than prison, and asked the Board to have heart for the people.

Chrisantema Mallardo spoke of her childhood in LA, and said that she had witnessed her schizophrenic neighbor shot and killed by police when his wife had called them for assistance. She said that growing up, the fact that her father got stopped by police once a week was normal to her. She said it was important that in collecting data, police officers be asked to write narratives about why they're stopping a person and not just check boxes.

Alfredo Guerra/Inland Congregations United for Change said that there needs to be crisis intervention teams, because police are not adequately trained. He said that if police were going to be in schools, they needed to be trained to deal with special-needs children.

Rosa Aqeel/PolicyLink and the Alliance for Boys and Men of Color said that communities deserved, at the very least, transparency and good data from law enforcement. She said she wanted to know how rank-and-file police would be kept accountable in reporting. She said that open-field narratives are critical and that police should not be able to say that taking time to collect data would take time away from policing. She said she feared that officers would act with impunity under the new President.

Tony Amarante/Faith in the Valley Kern said that he stood in support of the regulations, because they would provide more information and accountability.

Ray Grangoff/Orange County Sheriff's Department said that it was clear that AB 953 was law and that therefore certain data collection was required. He said it was unfortunate that the proposed regulations extended AB 953's requirements. He commented that it would take law

enforcement some time to implement the changes, and therefore that he recommended sticking to what was required by the statute.

Cory Salzillo/California State Sheriff's Association first said that there was no place for racial bias in policing. He recommended that the Attorney General scale back the regulations, because data collection would identify individual officers and expose them to physical harm and liability. He said that having officers collect so many data points would keep officers from responding to other calls and conducting routine patrols.

Sukaina/Faith in the Valley Fresno spoke about populations that leave behind oppressive governments elsewhere seeking a safe haven in the United States. She commented that police should be invested in making our communities safer rather than more militarized.

Nebew/Faith in the Valley/Live Free Campaign spoke about the variety of data police and sheriffs currently collect through Stingray and other programs and asked in light of that, what was wrong with communities having more access to data on police. He said that, to officers who think data collection is too burdensome, it's burdensome to your humanity to treat people as you do during stops, and asked to be seen as treated as a human being.

Andrea Onado/Long Beach Interfaith Community Organization spoke about the intersection of incarceration and police terror. She spoke about an atmosphere of increased hate crimes and discrimination following the presidential election.

Maria Lopez spoke of herself at Cal State compared to her brother, who was profiled, detained and deported only a few months after his daughter had been born. She commented on the difference between law enforcement concern about too much work and community concerns about being killed and deported. She said she saw AB 953 as an opportunity for change and to make a better world.

Caitlin Dean/PICO spoke to her personal story – that she was the product of a lack of police accountability; that she graduated from John Jay College. She commented that officers owe the community the time it takes for this reporting; that the community suffers costs and time – counseling, funerals, and so forth.

## **5. Break**

The Board recessed for approximately five minutes, reconvening with a quorum of members present.

## **6. Discussion of Comments Submitted by the Board**

### **a. The Inclusion of Narrative Fields, Especially in Response to Reason for the Stop, Detention, etc.**

Member Lytle spoke about the importance of consent, which touches on the reason for the stop, basis for search, etc. She spoke of consent affecting reporting requirements in certain situations, and questioned what constitutes consent, noting that the fact that officers carry weapons makes

consent problematic. She suggested the Board consider including whether the officers were in uniforms or in patrol cars. She also said that it should be made clear that perceived or known disability includes mental disability, and that information should be gathered on whether the person stopped was frightened, angry, nervous, confused, and so forth. All of these issues bear on the issue of consent, because many won't assert their right to refuse consent if they are immigrants or have had negative interactions with law enforcement in the past.

#### **b. Demographic Information of the Person Stopped**

Member Guerrero noted that "other" and "none of the above" categories are not helpful. She mentioned a letter from the ACLU and others that had recommended strengthening or refining the collection of demographic data. She concurred with all of the recommendations in that letter. Those recommendations include describing both adults and youth in the "perceived gender" category.

Member Marroquin was pleased with the perceived gender question, and also wanted to include a catchall question for whether the officer perceived the person to be LGBT. Co-Chair Medrano noted that the proposed regulations identified male, female, transgender male, transgender female, and gender nonconforming. He asked if Member Marroquin was suggesting adding an LGBT box in addition. She said that was her recommendation – to just have a yes/no question whether the officer perceives the person stopped to be LGBT.

Member Johnson inquired about the strategy being used to facilitate the Board discussion, commenting that the conversation seemed to be jumping around. Co-Chair Evans clarified the big themes submitted by Board members: 1) Narrative fields; 2) Demographics of person stopped; 3) School settings; 4) Officer identity and unique identifier; 5) Treatment of passengers in vehicles; 6) Time and cost issues; and 7) Special settings like courthouses, etc.

Member Durali commented she agreed with adding catchall for LGBT. She suggested adding a category for learning disability or ADHD to the school section. She also recommended adding language that stated that a 21-year-old special education student enrolled public school would also be a student for purposes of the regulations, noting she thinks they're included, but the regulations should be specific. She also suggested the consideration of a perceived religion category. Co-Chair Medrano asked if the already-included "developmental disability" needed to be expanded. Member Durali said that she was concerned about ADHD particularly.

Member Johnson aligned himself with the ACLU recommendations, and with regard to "person stopped had limited English fluency or pronounced accent," he recommended following the recommendation of ACLU and removing "pronounced accent" from the language of that section.

#### **c. The Inclusion of Narrative Fields, Especially in Response to Reason for the Stop, Detention, etc.**

Member Sierra asked what could be included in the language, if narrative fields were available, to maintain the privacy of individuals. She also asked whether the amount of information in narrative fields should be limited for purposes of analysis. Member Ali said that he would like to hear Dr. Eberhardt's perspective on that question. Member Eberhardt said that regarding privacy

issues, the narrative fields could be redacted, same as the demographic information can be redacted. She said as a researcher, more information is better.

Member Eberhardt additionally commented on an issue that came up at public comments in both Los Angeles and Oakland. She agreed with concerns that without narrative fields, it would be hard to assess why officers were taking specific actions. She commented that there are real costs to not collecting narratives. She gave the example of the reasonable suspicion category, saying that there is a drop down list of options, but some of the options listed are ambiguous or vague and having supporting information through narrative will be necessary to understand the context. She noted the same problem of ambiguity in the “basis for the search” category, providing examples of “consent given” and “officer safety” as dropdown options in need of greater explanation. She said that without narrative fields, it would be hard to ascertain whether racial disparities were the result of racial profiling.

Co-Chair Medrano restated the concerns of law enforcement, commenting that this is a significant change and if the regulations’ requirements are too onerous, it will have a chilling effect on the police’s other responsibilities. He recommended revisiting the topic of narratives after the initial regulations had been implemented by major agencies.

Member Eberhardt reiterated that the narrative fields would only be for certain categories of information and are particularly important for reasonable suspicion and basis for the search, and that without narratives, you would not know whether the stops or searches are constitutional, and that’s what’s needed to know whether racial profiling has occurred or not.

Co-Chair Evans also spoke in strong support of narrative boxes. She noted that narrative boxes give supervisors and managers the chance to do remediation and training, and commented that mere assertion of reasonable suspicion or probable cause is not enough to establish that an officer indeed had either.

Member Johnson subscribed himself to Member Eberhardt’s comments and said that strong public safety comes from good data. He said that where “other” is an option, there needs to be a narrative field option, even if it has a limited character count. He recommended narrative fields at a minimum for the “reason for the stop” and “basis for the search.”

Member Bobrow commented that he goes back and forth about requiring a narrative and expressed concern about capturing data electronically if narrative fields are included. He noted that the subcommittee tried to capture all of the potential reasons in the drop down menus, and recommended – to balance law enforcement concerns about time – adopting the existing drop-down menus and removing “other” as a category.

Member Lytle noted that although the Board did not want to disrespect the officers’ time, it was important to remember that the collection of this data would be equally valuable to patrolling and investigating activities and may in the long run save lives.

Member McBride agreed with Member Lytle, and said that the discussion of officer time and taxpayer money should be a critique led by the community and not the public safety apparatus. He commented that the community put forward the bill and has been very clear about their

priority in having this data collected. He said because the drop-down menus were so specific, the narrative fields would not have to be used all the time, but are needed where the check boxes won't capture the data.

Co-Chair Medrano reiterated that he did not think narrative fields were a waste of time, but rather that the Board had to balance different considerations. He confirmed that the Board suggested narrative fields for the following categories: reason for the stop, reasonable suspicion, and basis for the search. Member Eberhardt clarified that she brought up specifically "reasonable suspicion" and "basis for the search."

Member Ali wished to associate himself with Member Eberhardt's comments. He commented that even a short Tweet can go a long way, and therefore reduced narrative fields could be useful in protecting both civilians and officers.

Member Farrow asked whether the Board was discussing including narrative fields only in instances where an officer would otherwise choose "other." Co-Chair Medrano clarified that for the three categories suggested, the Board was considering narrative boxes in which the officer would write out an explanation beyond one or two words.

Co-Chair Evans recommended that there be a narrative box for "reason for the stop," "basis for the search," and if "other" is kept as a category, include narrative fields as well.

Member Farrow noted that the drop-down menu for "reason for the stop" encompassed most options from a police officer's perspective, and that it doesn't seem clear why a narrative is needed to explain a moving violation, for example. He commented that his department makes about 2 million stops per year, and that every minute added to the collection of data would result in the loss of 46,000 hours of patrol time. He agreed that "other" and "none of the above" may require more information, but that the other drop down options seemed sufficient.

Co-Chair Medrano asked what the purpose of a narrative field would be in categories where officers were already required to specify the type of code violation made.

Member McBride responded that in the reasonable suspicion category, there was an option for "other reasonable suspicion," and suggested wherever there is an "other" it lends itself to ambiguity.

Co-Chair Medrano asked again how the traffic violation category would benefit from a narrative field. Member Eberhardt clarified that she had been focused on the reasonable suspicion category, not traffic violations. Co-Chair Evans clarified that her examples also fell under reasonable suspicion.

Member Bobrow said that any time there is an "other" option, that requires a narrative.

Member Ali asked what a sufficient amount of characters for narrative fields would be.

Member Eberhardt recommended not putting a word limit necessarily, but enough words to establish the justification for the stop or search.

Co-Chair Medrano said that he did not know whether they could make a recommendation for a specific number of characters, but that the Board could discuss that later.

Member Ali asked about the “other physical disability” option, and what that means. He had similar concerns about “other evidence” and “other contraband.” He also commented that some of this is too much; that bullet points could be removed and narratives could be used instead.

Member Durali commented on the “basis for search” category in the K-12 section. She found the phrase “suspected violation of school policy” very vague. She said that a short narrative field could be very helpful.

#### **d. Officer Information, Demographic Characteristics and Unique Identifier**

Member Robinson voiced concerns about keeping officers’ identities confidential, particularly with regard to smaller departments where they may be fewer than ten officers with between four and ten years of experience. He wanted to know how identifying information would be protected.

Ms. Beninati said that the protections from AB 953 have been built into the regulation. The DOJ will not have information on the officer’s identity, only the unique identifier, and that the regulations endeavor to protect officer information. She commented that, as mentioned previously, DOJ could not prevent a court from ordering such information released. Member Sierra reiterated Ms. Beninati’s point that the regulations adhere to the protections provided in the statute, and commented on the value of this data, including officer years of experience. She said that the DOJ would be open to hearing additional suggestions.

Member Durant expressed appreciation to the Board and the public present. He handed out a document that outlined the concerns of PORAC (Peace Officers Research Association of California), and noted that officer identity cannot be protected, though the legislation was written to ensure no officers are identified. He then read from statement, through which he communicated that PORAC was assured that officer information won’t be released to the public and expressed concern that the regulations create a unique identifier and collect officer information and this information could be released to the public and potentially reveal the identity of an officer. His statement expressed that the protections in the regulations are insufficient and requested that any reference to a unique identifier be removed from the regulations.

Member Bobrow said that he believed the Public Records Act (PRA) would not override protections within the legislation to keep officer information confidential, and that he therefore believed PORAC’s concerns are unfounded.

Member Durant reiterated his position that there seems to be confusion about what information can be released and his request that the unique identifier be removed.

Member Sierra acknowledged that PRA, as it relates to stop data, would need to be litigated. She clarified that the statute enumerates what local law enforcement agencies shall not collect on the person stopped or searched. She went on to say that the statute contemplated the collection of data about the officers, because it specified certain pieces of information, including badge

number, would not be released to the public. Co-Chair Medrano asked how this would impact local law enforcement agencies, and Member Sierra clarified that the provision that exempts this officer information from disclosure applies to local law enforcement as well as to the Department of Justice.

Co-Chair Medrano asked if it was possible for the Attorney General to issue a legal opinion so that all parties would understand the rules.

Member Durant reiterated his concern that the unique identifier was not contemplated by the legislation and would be subject to disclosure. He recommended eliminating the unique identifier as a solution.

Member Sierra asked whether eliminating the unique identifier would leave too large a gap in the collected data. Member Durant reiterated his position to remove the identifier or need for the Board to discuss this further.

Member McBride asked if one of the purposes of the unique identifier was to collect demographic data about police officers. Member Sierra said that per the draft regulations, that information would not be collected.

Member Eberhardt commented that it was discussed at one time to collect demographic information on officers to understand whether diversifying police forces might help prevent against profiling. She noted that demographic data would help us know if officer race has an impact on racial disparities. She further commented that the unique identifier, type of assignment, and years of experience all are used to understand where disparities might be emerging from and provide additional information to researchers as to how to interpret them.

Member McBride said that it was the intention of those that pushed for AB 953 to understand trends of different factors, including what kind of scenarios, assignments, and conditions are leading to certain outcomes in stops.

Ms. Beninati said that Member Tim Silard, who was not present, had asked the DOJ to raise a point on the issue of officer identity. Mr. Silard wanted make the point that it's important to collect information on officers' gender, race and years of experience.

Member Durant again said that it was never the intent of the bill's author to identify officers.

Member McBride responded that the purpose of the unique identifiers is to protect the officers' personal information. He questioned whether there needs to be a different discussion about how to protect officer information at the local agency level, rather than a discussion about the use of a unique identifier – which helps us better understand the data. Member Durant suggested the Board should support new legislation to protect officer data at local agencies.

Co-Chair Medrano pointed out that it was unclear how the information would be protected functionally. Member Durant agreed that that was his concern.

Co-Chair Evans asked if the DOJ could research the issue or ask for an Attorney General's opinion. Ms. Beninati commented that someone would have to externally request that sort of opinion. She suggested that the Board vote to submit such a request, provided that they had the authority to do so. Member Evans suggested the Board might request a legal opinion, commented that legislation seemed premature, and emphasized that most of the Board agrees that being able to link stops by officer using a unique identifier, not exposing the identity of the officer, is important for analyzing the data.

Member Ali asked if the Board did not have authority to put in that request, could PORAC ask Assemblymember Weber to seek a legal opinion. Member Durant seconded the Co-Chair's motion to have the Attorney General's office produce a legal opinion.

Member Farrow asked if seeking a legal opinion would put a stay on the regulations. Ms. Benanti responded that she anticipated that the regulations would move forward on a different track.

Member Johnson asked if there was a way for the DOJ to expedite the process. Member Sierra said there may be, but she could not guarantee it.

**Motion:** A motion was made by Co-Chair Evans and seconded by Member Durant to request, as the RIPA board, a legal opinion from the Department of Justice, and that if the Board did not have such authority, Members Medrano and Evans would put together an independent request. The motion was passed by a voice vote of the members present, with Member Sierra abstaining.

#### **e. Implementation in Schools**

Member Durali pointed out that in the "reason for stop" section for K-12 schools, the Education Code sections reflect vastly different offenses – from being disruptive to sexually assaulting another student. She recommended that the subsections be broken down further so that the specific categories in the listed statutes be included to make the data more meaningful.

Co-Chair Evans renewed her recommendation for narrative boxes in those contexts. Member Durali agreed.

#### **f. Special Settings**

Co-Chair Medrano was concerned about an example used that involved a vehicle being towed. He said that in certain situations, such as those involving stolen vehicles, the individuals were not detained so much as they happened to be in a car they could no longer be in. He suggested that if the only action the office takes is to tow a vehicle, data should not have to be collected on the passengers of the vehicle.

Member Bobrow recommended that if identification was requested in any form, that should trigger the RIPA requirements. He said that anytime someone with a badge and gun asked an individual for identification, they would not feel free to leave. He additionally said that if an authorized search is being carried out, (search warrant, etc.), and individuals present are asked for identification, they should also be subject to the reporting requirements. Co-Chair Medrano

expressed he thought that was consistent with the regulations; that if an individual is detained, data will be collected on them.

Member Farrow commented that there are some scenarios when an officer asks for identification to seeking a person who can legally drive the vehicle, and when a car is towed and the passengers have to be transported off the freeway, the officer does not have any discretion and must ask for identification before transporting those individuals. Co-Chair Medrano said that he did not think those situations would trigger reporting requirement. Ms. Beninati explained that those situations would fall under the community caretaking category. Co-Chair Medrano reiterated that he didn't think those situations should require reporting.

Member Durali asked if there was going to be an incident identifier. She asked if, when an officer stops multiple people at once, those incidents would be linked. Mr. Hwu explained that there would be a way to report a single incident involving multiple individuals.

#### **g. Follow-up Discussions**

Co-Chair Medrano said that regarding narrative boxes there were two trains of thought—one, including narrative boxes for reason for stop, reason for search, and reasonable suspicion categories; and two, expanding the narrative boxes to other categories. Member Evans made a motion to require a narrative box for reason for the stop, basis for the search, and any place where it says “other.” Seconded by Member [unknown].

Member Farrow asked why narrative boxes were necessary in situations where the drop-down options provide an adequate response. Co-Chair Evans responded that the narrative boxes could provide context. Commissioner Farrow asked if Co-Chair Evans would amend her proposal to exempt narratives for moving violations, etc. Co-Chair Evans explained that she'd rather not amend her motion, commenting it's important to have context to understand pretextual stops, etc. that may disproportionately impact certain communities.

Member Farrow asked if the drop-down menus would be replaced by narrative boxes. He added that he was looking to save time and simplify the form. Member Johnson responded that the context of a stop could be captured very succinctly, in a limited amount of characters. He considered this a reasonable compromise between drop-down menus and extended narratives.

Member Durant echoed Member Farrow's concerns.

**Motion:** A motion was made by Co-Chair Evans and seconded by Member [unknown] to recommend that regulations be modified to require a general narrative box to correspond with the “reason for the stop, basis for the search, as well as requiring a general narrative box any other place where there is an “other” option. The motion was passed by a hand vote of the members present, 11 in favor and 4 opposed, with 1 abstention from Member Sierra.

Member McBride revisited the unique identifier conversation to comment that requesting an Attorney General opinion might delay the process and end up with the removal of the unique identifier to the detriment of the meaning of the data, and made a motion to rescind the request to the Attorney General's office to produce an opinion. Motion was seconded by Member Guerrero.

Member Bobrow asked if the request for the Attorney General's opinion would actually delay the regulations. Member Sierra said that she thought multiple tracks of action could occur simultaneously, but she was not sure how the timing of each action would work out.

Member Guerrero said that the Board had previously recommended unique identifiers because it's important to address the type of analysis they want. She commented that the discussion at hand is how to clarify the protections of officer data. Noting that the formal AG opinion is a lengthier process, she requested DOJ provide written clarification on the legal protections of officer data, but not produce a formal opinion. Member Sierra clarified that any opinions from the DOJ would have to be the result of a formal process; that the DOJ cannot give legal advice.

Member Robinson said that he did not understand that the earlier motion for an Attorney General opinion would stall the regulations from going forward. Co-Chair Medrano agreed.

Member Ali made a comment that could not be heard in the recording.

Member Durant noted that it was not the intent of the original motion to stall the regulations, and asked Member McBride to rescind his motion. Member McBride commented that he would move forward with his motion so as not to initiate a new process around this.

**Motion:** A motion was made by Member McBride and seconded by Member Guerrero to reconsider and rescind the earlier request to the Attorney General's office to release a formal opinion on the protection of the unique identifier. The motion was passed by a hand vote of the members present, 10 in favor and 4 opposed, with 2 abstentions.

Co-Chair Medrano returned to the category of information about the person being stopped. He stated the Board's suggestions: (1) Add LBGT question, (2) learning disability/ADHD (hyperactivity) in the school context, and (3) religion.

**Motion:** A motion was made by Member Ali and seconded by Member Marroquin to add perceived LGBT question under gender for the person being stopped. The motion was passed by a voice vote of the members present, with one no and one abstention.

**Motion:** A motion was made by Member Durali and seconded by Member [unknown] to add learning disability/ADHD to the drop-down menu about the person being stopped in the school setting. The motion was passed by a voice vote of the members present, with one abstention.

Co-Chair Medrano expressed concerns about perceived religion as a category, commenting on the difficulty in identifying one's religion. Member Durali asked Member Eberhardt whether it would be a useful data element, to which Member Eberhardt affirmed she thought it might be useful and posed to Co-Chair Medrano if it might alleviate his concerns to have an option, "unknown."

Member Lytle noted that if there was an obvious visual signal, such as a hijab, an officer could check the appropriate box, and if not the officer could check unknown.

Member Guerrero expressed that she thought officers would still have difficulty distinguishing what religion an individual was; that it's not as clear as some of the other demographic categories.

Member Durali stated that she thought it did not matter whether the officer's perception was accurate; what matters is the officer's perception and whether they act on it. In the current political climate, she suggested perceived religion might be useful. She said that using an open field, including writing "unknown," might reduce the complications.

**Motion:** A motion was made by Member Durali and seconded by Member [unknown] to add perceived religion to the question about the person being stopped, with a fill-in field. The motion was passed by a voice vote of the members present, with two opposed and one abstention.

**Motion:** A motion was made by Member Johnson and seconded by Member Ali to remove "pronounced accent" and limit that category to "limited English fluency." The motion was passed by a voice vote of the members present, with one abstention.

Co-Chair Medrano noted that in the near future, the Board would have to work on its first report.

**Motion:** A motion was made by Co-Chair Medrano and seconded by Member Robinson to forward recommendations made during the meeting to the last public meeting being held on the same day. The motion was passed by a voice vote of the members present, with one abstention.

## **7. Closing Remarks and Adjournment**

The meeting was adjourned at 2:15 p.m. by Co-Chairs Medrano and Evans.