

# CALIFORNIA RACIAL AND IDENTITY PROFILING ADVISORY BOARD

## MEETING MINUTES

### 16<sup>th</sup> Meeting of the Racial and Identity Profiling Advisory (RIPA) Board

#### December 9, 2019, 10:00 a.m.

Video and Teleconference Meeting

Various California locations including the DOJ Sacramento, Los Angeles and Oakland Offices

The sixteenth meeting of the California Racial and Identity Profiling Advisory (RIPA) Board was held on Wednesday, December 9, 2019 at various government and community locations.

**Members Present:** Sahar Durali, David Robinson, Andrea Guerrero, David Swing, Douglas Oden, LaWanda Hawkins, Warren Stanley, Steven Raphael, Sandra Brown, Tim Silard, Damon Kurtz, Micah Ali

**Members Not Present:** Timothy Walker, J. Edgar Boyd

**California Department of Justice Staff Present:** Nancy A. Beninati, Supervising Deputy Attorney General, Civil Rights Enforcement Section (CRES); Allison Elgart, CRES; Aisha Martin-Walton, CRES; Anna Riek, CRES; Christine Sun, Special Assistant to the Attorney General; Audra Opdyke, Assistant Chief, Bureau of California Justice Information Services (CJIS); Erin Choi, CJIS; Kevin Walker, CJIS; Trent Simmons, CJIS; Jannie Scott, CJIS; Domenico DeLuca

#### **1. Call to Order by Co-Chairs Durali and Robinson**

The meeting was called to order at 10:13 A.M. by Co-Chair Durali.

Co-Chair Durali welcomed the Board and the members of the public to the meeting. Board members introduced themselves.

#### **2. Approval of November 20, 2019 Meeting Minutes**

**MOTION:** A motion was made to approve the minutes of the November 20, 2019 meeting minutes by Co-Chair Durali. The motion was seconded by Member Silard.

**APPROVAL:** The minutes were approved with 11 members in attendance voting “yes”, no “no” votes, and Member Kurtz abstaining.

### **3. Update from the Department of Justice**

Allison Elgart welcomed everyone and discussed the draft January 2020 RIPA report. The current draft included all of the requested Board member changes: The Executive Summary was completed, the Stop Data Analysis section and the Technical Report were edited, a discussion of the Board members' different perspectives about the Veil of Darkness (VOD) methodology was added to the Stop Data analysis section, and requested changes have been made to the Civilian Complaint section. Finally, a fact sheet with graphics that highlight the findings of the data was created to be used as a quick reference to the Executive Summary. Ms. Elgart stated that it was her hope that the Board would discuss the changes to the report, then approve the draft report, and allow DOJ to work with the Co-Chairs to finalize any non-substantive changes that may be requested by Board members.

Nancy Beninati explained the remaining tasks in the review process that are necessary to publish the report by the legislatively mandated date of January 1, 2020. Ms. Beninati advised that if after this meeting there are non-substantive edits, the Board can approve the draft report, direct DOJ to make those changes in coordination with the Co-Chairs or their designee, and give the Co-Chairs authority to vote on the final version of the report on behalf of the Board. Following the sign off by the Co-Chairs, DOJ will post the report on the public website on January 1, 2020 and issue a press release with invited quotes from the Board Co-Chairs or a statement from the Board as a whole. The report will be emailed to the thousands of people in the RIPA list-serve. Ms. Beninati requested the Board members to please send it out widely to their networks.

Kevin Walker highlighted changes made to the report since the November 20, 2019 meeting, including creating a fact sheet, presenting some of the stop data analysis without CHP data so it would not have an outsized influence on the findings, including Terry searches in the "higher discretion" yield rate analyses, adding limitations to the different methodological approaches for the stop data analysis, including enforcement rates for all identity groups and adding in an alternative higher yield rate table in the Technical Report, and changing some of the report graphics to reflect Board member suggestions.

### **4. Overview of Report Progress by Board Co-Chairs Durali and Robinson**

This agenda item was incorporated into agenda item number 5 below.

### **5. Board Discussion of the 2020 RIPA Report**

Member Swing asked about the low discretion category in the Technical Report and expressed that post-stop searches of individuals on probation or on parole should be in the low discretion category since an officer has an obligation to search the individual in order to ensure compliance with the terms of court-ordered supervision.

Co-Chair Robinson agreed. Probation and parole searches are considered court-ordered compliance searches, especially when the stop involves a booking or arrest.

Member Raphael asked if it is the case that whenever someone on probation or parole are stopped for any reason it is mandatory that they be searched?

Member Kurtz agreed with Member Swing and Co-Chair Robinson. He explained from his experience that although searches of individuals on parole or probation are not mandatory, in practice it is almost automatic for officers to search such individuals when stopped. Member Kurtz stated that the search in a sense is mandatory because these individuals are under court-ordered supervision, including being subject to a search to ensure that new crimes are not being committed. He stated, for example, if a person on probation or on parole were stopped, possessed a weapon, had a violent history, committed a violent crime, and was not searched, that officer would be penalized for not doing his or her job.

Member Silard disagreed with a low discretion designation for these types of searches. He stated that studies show that when officers search people on parole and probation it is a contributing factor to racial and identity profiling; however, the impact of this is a different issue and could be discussed by the Board in the future. He concluded by stating that searching someone on probation or parole is not mandatory, it is discretionary and therefore, it should not be listed in the low discretion category of the report.

Co-Chair Durali recommended that the definition of high discretion and low discretion categories be included in the report.

Per a suggestion by Member Raphael, Mr. Walker advised that he will correct the footnote citations to the search bases table in the Technical Report and include a reference to the 2018 study published in the Criminal Justice Policy Review which lists all of the search bases. It categorizes some as high or low discretion searches and lists those not included in either category. The list of all search bases are in the Technical Report Table 2.15.7 on page 41. The study is entitled Traffic Enforcement Through the Lens of Race: A Sequential Analysis of Post-Stop Outcomes in San Diego, California. This study was used by DOJ to identify the high and low discretion categories in the January 2020 RIPA report.

Member Silard suggested specific edits be made to some visuals in the Fact Sheet and report, and Mr. Walker agreed to make the changes.

Member Raphael indicated that interesting questions are coming up such as disability intersectionality and probation and parole searches and suggested perhaps the Board can focus on these in the future.

Mr. Walker suggested a specialized research topic could be handled in the report or as a separate interim report, but it depends on the timeline.

Member Silard recommended any interim report be on the results from data already collected, and not simply on a topic of interest. Nor should future reports continue to focus overwhelmingly on the data. Future or interim reports should focus on the problems identified by the data with policy recommendations and proposed solutions by the Board.

Ms. Beninati advised that the first meeting of 2020 is in March and that it will be a planning meeting for future reports. She stated that it is important for the Board to remember that data is not due until April 1 of each year so if the Board wants an interim report in 2020 it will be based on the six months of 2018 data.

Mr. Silard reminded everyone that the mission of the Board is to eliminate racial and identity profiling and data is a means to that end. Therefore, the Board should begin in March 2020 to have discussions about the problems identified from the data, the changes that need to be made, and the best ways for the Board promote those changes.

Co-Chair Robinson suggested that because there are only six months of data and some areas are still not included in the report, the Board should wait to have one full year of data before recommending changes and solutions. Member Silard agreed.

Member Guerrero commended the DOJ team for making the changes to the report in a very short period of time.

Co-Chair Durali thanked the DOJ team for adding the various agencies policies.

**MOTION:** Member Durali made a motion to approve the January 2020 report pending subsequent non-substantive changes and to empower the Co-Chairs or their designees to work with the DOJ on any changes and to make the final approval of the report once the changes have been made. Member Silard seconded the motion.

**APPROVAL:** The motion was approved with 12 members in attendance voting “yes”, no “no” votes, and no abstentions.

## **6. Public Comment**

**Eva Bitran**, ACLU Southern California, thanked the Board for the public video opportunity. She applauded the DOJ for pulling out the disaggregated CHP data. She encouraged the DOJ to place footnote 21 in the text and suggested that Table 2.13.2 and 2.13.3 in the Technical Report be discussed in the report. On page 33, she suggested in the VOD section that the sentence read “reasonable suspicion stops shows bias” in lieu of “reasonable suspicion stops are more likely to show bias.” She was pleased to know that intersectionality may be coming in future reports. Ms. Bitran was also pleased to know that the Board was not adding probation and parole searches in the low discretion search category. She stated it is a potential place where bias can occur. She made a standing request for the community to receive drafts of the reports sooner. She appreciated member Silard’s comments that the Board should begin to make policy recommendations about the results of the data because the Board has such great expertise.

**Michele Wittig**, Santa Monica Coalition of Police Reform, thanked the Board for the opportunity to participate in the public comment. She encouraged the DOJ to hold a press conference for the January 2020 report, for the Board to identify trusted individuals who could

also speak to the press and the community and finally to disseminate the report and fact sheet throughout California because the data is very important.

**Katie Mathews**, Disability Rights Organization, thanked the Board for all of the hard work and responses to previous comments. She asked if the community could receive materials sooner. She was pleased that the Board will not categorize officers' decisions to search persons who are on parole or probation as low discretion searches. She stated that there is an assumption that if you are on probation or parole you are automatically allowed to be searched and that is a problem. She suggested that it's an area the Board might want to look into after receiving more data. Ms. Mathews also requested not only stop data on individuals with disabilities but also an analysis of that data, specifically when it comes to race and disability. Finally, she stated that Tables 7.4 and 7.5 in the Technical Report indicate disturbing information about people with perceived mental health conditions. Specifically, over 55% are handcuffed and 52.4% are searched because of perceived officer safety or safety of others. She found it interesting that people with a disability represent 10.6% of the population in California and 1.1% of the data. She requested the Board to look at how often and extreme officers' responses are to persons with disabilities.

## **7. Final Discussion of RIPA Board Report and any Further Action**

Member Tim Silard reiterated his desire for the Board to begin conversations about broad topics related to racial and identity profiling beginning with March 2020 meeting. He suggested that a panel of experts on topics like mental health and others engage with the Board. He also expressed concern about technology surveillance and how it may contribute to racial and identity profiling. He shared what he characterized as shocking news about allegations that New York officers are being directed by supervisors to target Black and brown persons. For Member Silard it raised the following questions: Could this be happening in California? Do law enforcement agencies have mechanisms in place that allow officers to anonymously report these kinds of activities?

Ms. Beninati brought up draft letter to Assemblywoman Shirley Weber that the Board had previously requested and reviewed and that was to be voted on at the meeting. Member Guerrero stated that she liked the letter.

**MOTION:** A motion was made by Member Silard to approve the draft letter from the Board to Assemblywoman Shirley Weber requesting a Legislative resolution of the conflict between state and federal language relating to civilian complaints. It was seconded by Member Guerrero.

Member Ali asked how the letter could be voted upon if it was not on the agenda and whether the public had an opportunity to review the letter. Ms. Elgart clarified that the letter fell under the December 9, 2019 agenda item number seven entitled Final Discussion of RIPA Board Report and any Further Action. It was pursuant to a motion approved at the September 26, 2019 Board meeting for the DOJ to draft a letter on behalf of the Board. The draft copy was distributed and discussed at the November 20, 2019 Board meeting. A copy was also provided to the public at the November meeting.

Ms. Beninati recommended that the Board conduct a roll call vote on this item due to the meeting being video and teleconferenced and because several members expressed abstaining.

A roll call vote was as follows: Member Guerrero, yes; Member Kurtz, yes; Co-Chair Robinson, yes; Member Swing, abstain; Member Oden, yes; Member Ali, abstain; Co-Chair Durali, abstain; Member Brown, yes; Member Silard, yes; Member Stanley, abstain; Member Hawkins, abstain; Member Raphael, yes

**APPROVAL:** The motion was approved with 7 members in attendance voting “yes” and 5 members voting to abstain.

Member Ali asked for clarification about the approval process of the January 2020 report by the Board as it relates to public comments. He stated that the Board voted to approve the January 2020 report prior to receiving public comments on the report. Member Ali indicated that his concern was based on his knowledge of the Brown Act, and its governance of local government meetings. He recognized that the RIPA Board is not governed by the Brown Act. Ms. Beninati clarified that the RIPA Board is governed by the Bagley-Keene Act.

Per Member Ali’s request, Member Silard summarized that: (1) the Board wanted to provide itself and the public an opportunity for final comments of the December 9, 2019 draft report; (2) Ms. Beninati believed that the Board was in compliance with the Bagley Keene Act; (3) the Board vote approved the report pending receipt of Board and public comments thru December 12, 2019 via the [AB953@doj.ca.gov](mailto:AB953@doj.ca.gov) email address; and (4) the Board vote empowered the Co-Chairs or their designee to work with the DOJ on the final approval of the report on behalf of the Board pending the review and full consideration of all Board and public comments. Co-Chair Duarli concurred with that summary.

Member Ali recommended that in the future the public comment item be placed on the agenda prior to the report action item when discussing future RIPA reports. His suggestion was noted by Co-Chair Durali.

Ms. Elgart asked the Board to mark their calendars for the next meeting scheduled for March 20, 2020 in Bakersfield, California. Ms. Beninati thanked the Board for its leadership and agreed with Member Silard that there was great work done with the data and great policy ideas were identified in the report in the areas of bias by proxy, civilian complaints, and bias-free policing policies.

## **8. Adjourn**

Co-Chair Durali thanked everyone and adjourned the meeting at 11:30 A.M.