

Appendix A:

Information gathering and meeting with law enforcement

1. Sample agenda for meetings with local law enforcement
2. CA Public Records Act Request re: community policing
3. CA Public Records Act Request re: California Highway Patrol communications with ICE
4. Know Your Rights: What to Do If Questioned by Police, FBI, Customs Agents or Immigration Officers

Sample Agenda for Meetings with Local Law Enforcement

Thank you for the meeting and introductions [point person]

- Ask each attendee to introduce themselves, their organization if applicable, how many community members served and/or represented, and constituency (if applicable because Sheriffs are elected)

Overview of community oriented policing [point person]

- As you know, the goal of community oriented policing is to work with community members to address local problems at the root and develop long lasting solutions. Community policing depends on relationship building and trust between local law enforcement and the community.
- While community policing is the dominant policing strategy in the U.S. and many department policies align with community policing, it is not always reflected by officers on the field.
- In fact, BEAT cops oftentimes have varying levels of understanding of community policing. They describe it as 'having more officers in the community,' and 'officer involvement in neighborhood associations.' But community policing is more than that.
- From community member's perspective, police officer's interactions with community members may be lawful but are not always legitimate. For example, when officers give out citations for minor infractions, such as 'riding a bicycle without the approved helmet', rather than a warning, they are eroding trust and confidence. Instead, officers should implement problem-solving solutions to uphold legitimacy within the eyes of the community.
- For example, a community policing practice would be encouraging the creation of speedbumps in the road, not issuing excessive speeding tickets.

How can community policing be measured? [point person]

- In traditional policing, police department success is often measured by how fast a 911 call is responded to.
- However, in a proactive community oriented model, police would measure success according to the amount of access community members have to the local police department.
- Community members should have multiple avenues to not only meet with police chiefs and officers, but also have direct input in the policy development, implementation, and the oversight of police practices.
- Success should be measured by the increase or decrease in the number of citizens' reports of police.

Community policing is beneficial to build relationships with the immigrant community in your jurisdiction. [point person]

- In the past and present, the immigrant community has not trusted local law enforcement agencies largely due to the fear of deportation. This mistrust is intensified because immigrant community members witness their family members and neighbors being arrested and eventually deported by ICE.
- In this way, local police officers and ICE agents become conflated. Immigrant community members know that contact with police can mean family separation.
- This mistrust severely marginalizes the immigrant community because they do not call on police for help when needed. The mistrust pushes the immigrant community further into the shadows.
- For example, undocumented mothers and survivors of domestic violence will not call police on their abusers out of fear of deportation.
- Community policing in policy and practice can change this pattern of mistrust and marginalization. Trust can be built by implementing concrete policies and practices that encourage relationship building and decriminalization.
- It's important to know that when noncitizen community members come in contact with the criminal justice system, they are at risk for deportation. If police officers prioritize problem solving, rather than citations and arrests, they can help keep families and communities together.

Regular Meetings: How soon can we meet again to discuss community policing? [point person]

Advocate for stronger local policies: [point person] *(Consider laying groundwork for more progressive local policy.)*

- We think it is important to maintain an open dialogue with the community and decide mutually what the best community oriented policing policies are for our community. Would you be open to engaging in further discussions with the community on this topic? (Follow-up here could be a community forum or an ongoing working group with the Police/ Sheriff's Dept.)
- Will the Police/ Sheriff's Department consider releasing a survey to community members to measure trust and get feedback on law enforcement training curriculum and community policing policies?
- If possible, provide stories to explain how community input has been valuable in the past.

Review Next Steps and Thank you. Note any follow up steps and thank them for the meeting. [point person]



June 5, 2012

Fullerton Police Department
237 W. Commonwealth Avenue
Fullerton, CA 92832

RE: CA Public Records Act Request

Dear Sir or Madam:

On behalf of the American Civil Liberties Union of Southern California, I write to request records pursuant to the California Public Records Act, GOVERNMENT CODE §6250, et seq. and the California Constitution, as amended by passage of Prop. 59 on November 3, 2004.

Please forward us any and all records and documents containing information regarding your policies, protocols, procedures, or programming for the period from five years preceding the date of this request to date, including, but not limited to, documents and records containing information regarding:

Community Policing¹

1. Training, policies, guidance or instructional materials regarding community policing programs, philosophies or statements and the number of participants in those programs where applicable.
2. Funding requests or sources of funding for community policing programming.
3. Any training materials or guidelines that contain references to how officers should interact with the community, act as liaisons or designated officers for a community, or create partnerships with community serving organizations and residents.

Crimes, Arrest Rates and Costs²

1. Total or aggregate numbers of crimes or crime rates in categories defined as Part 2 crimes by the Uniform Crime Reporting (UCR) Program.
2. Total or aggregate numbers of individuals **cited and released** under any code provision, including but not limited to California Penal Code, Health and Safety Code and Vehicle Code and arrest rates in categories defined as Part 2 crimes by the Uniform Crime Reporting (UCR) Program.

¹ Including but not limited to programming for neighborhood watch programs, explorers, ride-alongs, citizen police academies and their curriculums.

² For all requests enumerated in section please provide either the rate of offenses per a given unit or population, or the total number of offenses in the jurisdiction, or both (if available) for each of the last preceding five years.

Chair Stephen Rohde **President** Shari Leinwand

Chairs Emeriti Danny Goldberg Allan K. Jonas Burt Lancaster* Irving Lichtenstein, MD* Jarl Mohn Laurie Ostrow* Stanley K. Sheinbaum

Executive Director Hector O. Villagra **Chief Counsel** Mark D. Rosenbaum **Deputy Executive Director** James Gilliam

Communications Director Jason Howe **Development Director** Sandy Graham-Jones **Orange County Office Director** Belinda Escobosa Helzer

Legal Director & Manheim Family Attorney for First Amendment Rights Peter J. Eliasberg **Deputy Legal Director** Ahilan T. Arulanantham

Director of Policy Advocacy Clarissa Woo **Director of Community Engagement** Elvia Meza **Executive Director Emeritus** Ramona Ripston *deceased

3. Total or aggregate numbers of **arrests** under any code provision, including but not limited to California Penal Code, Health and Safety Code and Vehicle Code and arrest rates in categories defined as Part 2 crimes by the Uniform Crime Reporting (UCR) Program.
4. Number of offenders or suspects **booked into custody** in categories defined as Part 2 crimes by the Uniform Crime Reporting (UCR) Program.
5. Any and all summaries or aggregations of the data listed above including
 - a. The total number of arrests per year and by violation and disaggregated by race, gender, and age.
 - b. The total number of citations per year and by violation and disaggregated by race, gender, and age.
6. The total number of sworn officers and other personnel per year during the last five years.
7. The total number of emergency calls (911), their geographic origin (zipcode ok) within the city and average response times.
8. Aggregate costs, or estimates of aggregate costs, of daily costs of screening, arraigning, booking and holding arrestees.

As used above, “documents,” or “records” includes any “writing” as defined in Section 250 of the Evidence Code and is intended to have the broadest meaning permitted under the California Code of Civil Procedure, and shall be deemed to include, without limitation, all written, typed, electronically recorded or other graphic matter, of any kind or description, in any medium whatsoever, including but not limited to: letters, correspondence, electronic mail, papers, memoranda, agreements, books, reports, studies, diagrams, blueprints, diaries, calendars, logs, recordings, instructions, lists, minutes or meetings, order, resolutions, faxes, messages, resumes, summaries, tabulations, tape recordings, videotapes, policies, procedures, protocols, reports, rules, technical manuals, training manuals, and all other writings or tangible things on which any information is recorded or reproduced, and any and all amendments or supplements to all or the foregoing, whether prepared by a party or any other person.

Where possible, for all of the following requests, we ask that you provide us with the data in an electronic/digital format with the names redacted.

The California Public Records Act requires a response within 10 days of your receipt of this request. We would appreciate being notified if any of the materials will not be produced in this time frame.

Pursuant to GOVERNMENT CODE § 6253.1, a public agency may, in its discretion, determine to waive fees. See *N. County Parents Org. v. Dep't of Educ.*, 23 Cal.App.4th 144, 146 (1994). Because the ACLU is a nonprofit civil rights organization, we request that you waive any fees that would be normally applicable to a Public Records Act request. However, should you be unable to do so, the ACLU will reimburse your agency for the "direct costs" of copying these records (if your agency elects to charge for copying) plus postage. See GOVERNMENT CODE § 6253(B) (only "direct costs of duplication" can be charged to the requesting party). If you anticipate that these costs will exceed \$20, please notify us of the cost prior to making the copies.



I also request that you provide any public record identified above that exists in the following electronic formats to me in that electronic format, instead of in paper format: PDF format or all Microsoft Office formats, including Word, Excel, and PowerPoint. *See* California Government Code § 6253.9. No part of the information obtained will be distributed or sold for profit.

If any records are claimed to be exempt from disclosure, I request that: (1) you exercise your discretion to disclose some or all of the records notwithstanding the exemption; and (2) with respect to records containing both exempt and non-exempt content, you redact the exempt content and disclose the rest, consistent with California Government Code § 6253(a).

Additionally, if any records are withheld or redacted, please provide a written response that describes with specificity each and every record that is being withheld or redacted and the claimed reason for exemption under the California Public Records Act, along with supporting legal authority or authorities.

If you contend that this request does not reasonably describe identifiable public records, I request that you promptly assist me by eliciting additional information that will clarify my request and more clearly identify the records I am seeking. *See* California Government Code § 6253.1.

If you have any questions, please feel free to contact me at (714) 450-3962, extension 101.

Sincerely,

/s/

Lucero Chavez
Immigrant Rights Attorney



DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

P.O. Box 942898
Sacramento, CA 94298-0001
(916) 843-3050
(800) 735-2929 (TT/TDD)
(800) 735-2922 (Voice)



Sent Via E-Mail Only to awong@aclusocal.org

December 22, 2014

File No.: 4.A9684.R664(a)

Adrienna Wong, Esq.
Staff Attorney, Inland Empire Office
ACLU of Southern California
225 W. Hospitality Lane, Suite 211
San Bernardino, CA 94208

Re: Correspondence to the California Highway Patrol

Ms. Wong:

Your requests submitted to the California Highway Patrol ("the Department") sought information pertaining to:

- "Records reflecting any policy or procedure related to whether or the manner in which CHP employees and officers may initiate contact or communication with Border Patrol or ICE;"
- "Records reflecting any policy or procedure related to whether or the manner in which CHP employees and officers may share information regarding individuals who have come into contact with CHP with DHS or any of its components, including but not limited to Border Patrol and ICE;"
- "Communications, reports, and any other records documenting referrals, notifications, requests for assistance, other agency calls, or responses to requests for information communicated by CHP employees or officers stationed in Imperial, Riverside, and San Bernardino counties to Border Patrol or ICE between January 1, 2013 and the date of this request, including but not limited to any record listing the total number of referrals, notifications, requests for assistance, or responses to request for information;"
- "Communications, reports, and any other records documenting inquiries, requests for assistance, other agency calls, or requests for information communicated by Border Patrol or ICE to CHP employees, officers, or stations located in Imperial, Riverside, and San Bernardino counties since January 1, 2013, including but not limited to any record listing the total number of inquiries, requests for assistance, o requests for information;" and



Adrienna Wong, Esq.

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December 22, 2014

- *"Records reflecting agreements with DHS or any of its components, including but not limited to Border Patrol and ICE, regarding access to information about persons who come into contact with CHP, including but not limited to agreements for access to booking lists, information systems, or databases containing information about persons who come into contact with CHP, currently in force or in force at any time subsequent to January 1, 2013."*

Your request sought information from area commands in Imperial, Riverside, and San Bernardino counties, and you were informed that two Department field divisions – Border and Inland – would be contacted with requests for appropriate searches for potential responsive information.

You were informed the Department's initial response would be with respect to those area commands under the auspices of Border Division.

You were informed there were eight area commands in Border Division that are located within Imperial and Riverside Counties. These included San Geronio Pass (Beaumont, Riverside County), Blythe (Riverside County), Indio (Riverside County), Temecula (Riverside County), Desert Hills Commercial Vehicle Enforcement Facility (Riverside County), El Centro (Imperial County), Winterhaven (Imperial County), and Calexico Commercial Vehicle Enforcement Facility (Imperial County).

You were informed three of these commands had no documents responsive to any of the five requests. These commands are San Geronio Pass, Blythe, and Desert Hills Commercial Vehicle Enforcement Facility.

You were informed the Department's commands at the Calexico Commercial Vehicle Enforcement Facility and the area commands at El Centro, Indio, Temecula, and Winterhaven each have materials that in some manner are responsive to some of the requests. These materials are being sent separately to you electronically. This attachment is for the Calexico Commercial Enforcement Facility.

Sincerely,



JONATHAN S. ROTHMAN, Esq.
Special Counsel (004)
Office of the Commissioner
California Highway Patrol

Enclosure

Know Your Rights: What to Do If Questioned by Police, FBI, Customs Agents or Immigration Officers

WHAT TO DO IF YOU'RE STOPPED BY POLICE, IMMIGRATION AGENTS OR THE FBI

YOUR RIGHTS

- You have the right to remain silent. If you wish to exercise that right, say so out loud.
- You have the right to refuse to consent to a search of yourself, your car or your home.
- If you are not under arrest, you have the right to calmly leave.
- You have the right to a lawyer if you are arrested. Ask for one immediately.
- Regardless of your immigration or citizenship status, you have constitutional rights.

YOUR RESPONSIBILITIES

- Do stay calm and be polite.
- Do not interfere with or obstruct the police.
- Do not lie or give false documents.
- Do prepare yourself and your family in case you are arrested.
- Do remember the details of the encounter.
- Do file a written complaint or call your local ACLU if you feel your rights have been violated.

We rely on the police to keep us safe and treat us all fairly, regardless of race, ethnicity, national origin or religion. This provides tips for interacting with police and understanding your rights. Note: some state laws may vary. Separate rules apply at checkpoints and when entering the U.S. (including at airports).

IF YOU ARE STOPPED FOR QUESTIONING

Stay calm. Don't run. Don't argue, resist or obstruct the police, even if you are innocent or police are violating your rights. Keep your hands where police can see them.

Ask if you are free to leave. If the officer says yes, calmly and silently walk away. If you are under arrest, you have a right to know why.

You have the right to remain silent and cannot be punished for refusing to answer questions. If you wish to remain silent, tell the officer out loud. In some states, you must give your name if asked to identify yourself.

You do not have to consent to a search of yourself or your belongings, but police may "pat down" your clothing if they suspect a weapon. You should not physically resist, but you have the right to refuse consent for any further search. If you do consent, it can affect you later in court.

IF YOU ARE STOPPED IN YOUR CAR

Stop the car in a safe place as quickly as possible. Turn off the car, turn on the internal light, open the window part way and place your hands on the wheel.

Upon request, **show police your driver's license, registration and proof of insurance.**

If an officer or immigration agent asks to look inside your car, you can refuse to consent to the search. But if police believe your car contains evidence of a crime, your car can be searched without your consent.

Both drivers and passengers have the right to remain silent. If you are a passenger, you can ask if you are free to leave. If the officer says yes, sit silently or calmly leave. Even if the officer says no, you have the right to remain silent.

IF YOU ARE QUESTIONED ABOUT YOUR IMMIGRATION STATUS

You have the right to remain silent and do not have to discuss your immigration or citizenship status with police, immigration agents or any other officials. You do not have to answer questions about where you were born, whether you are a U.S. citizen, or how you entered the country. (Separate rules apply at international borders and airports, and for individuals on certain nonimmigrant visas, including tourists and business travelers.)

If you are not a U.S. citizen and an immigration agent requests your immigration papers, you must show them if you have them with you. If you are over 18, carry your immigration documents with you at all times. If you do not have immigration papers, say you want to remain silent.

Do not lie about your citizenship status or provide fake documents.

IF THE POLICE OR IMMIGRATION AGENTS COME TO YOUR HOME

If the police or immigration agents come to your home, **you do not have to let them in unless they have certain kinds of warrants.**

Ask the officer to slip the warrant under the door or hold it up to the window so you can inspect it. A search warrant allows police to enter the address listed on the warrant, but officers can only search the areas and for the items listed. An arrest warrant allows police to enter the home of the person listed on the warrant if they believe the person is inside. A warrant of removal/deportation (ICE warrant) does not allow officers to enter a home without consent.

Even if officers have a warrant, **you have the right to remain silent.** If you choose to speak to the officers, **step outside and close the door.**

IF YOU ARE CONTACTED BY THE FBI

If an FBI agent comes to your home or workplace, **you do not have to answer any questions.** Tell the agent you want to **speak to a lawyer first.**

If you are asked to meet with FBI agents for an interview, **you have the right to say you do not want to be interviewed.** If you agree to an interview, **have a lawyer present. You do not have to answer any questions** you feel uncomfortable answering, and can say that you will only answer questions on a specific topic.

IF YOU ARE ARRESTED

Do not resist arrest, even if you believe the arrest is unfair.

Say you wish to remain silent and ask for a lawyer immediately. Don't give any explanations or excuses. If you can't pay for a lawyer, you have the right to a free one. Don't say anything, sign anything or make any decisions without a lawyer.

You have the right to make a local phone call. The police cannot listen if you call a lawyer.

Prepare yourself and your family in case you are arrested. Memorize the phone numbers of your family and your lawyer. Make emergency plans if you have children or take medication.

Special considerations for non-citizens:

- Ask your lawyer about the effect of a criminal conviction or plea on your immigration status.
- Don't discuss your immigration status with anyone but your lawyer.
- While you are in jail, an immigration agent may visit you.
- Do not answer questions or sign anything before talking to a lawyer.

- Read all papers fully. If you do not understand or cannot read the papers, tell the officer you need an interpreter.

IF YOU ARE TAKEN INTO IMMIGRATION (OR "ICE") CUSTODY

You have the right to a lawyer, but the government does not have to provide one for you. If you do not have a lawyer, ask for a list of free or low-cost legal services.

You have the right to **contact your consulate** or have an officer inform the consulate of your arrest.

Tell the ICE agent you wish to remain silent. Do not discuss your immigration status with anyone but your lawyer. Do not sign anything, such as a voluntary departure or stipulated removal, without talking to a lawyer. If you sign, you may be giving up your opportunity to try to stay in the U.S.

Remember your immigration number ("A" number) and give it to your family. It will help family members locate you.

Keep a copy of your immigration documents with someone you trust.

IF YOU FEEL YOUR RIGHTS HAVE BEEN VIOLATED

Remember: police misconduct cannot be challenged on the street. Don't physically resist officers or threaten to file a complaint.

Write down everything you remember, including officers' badge and patrol car numbers, which agency the officers were from, and any other details. Get contact information for witnesses. If you are injured, take photographs of your injuries (but seek medical attention first).

File a written complaint with the agency's internal affairs division or civilian complaint board. In most cases, you can file a complaint anonymously if you wish.

Contact the ACLU of Southern California at 213.977.9500 or www.aclu-sc.org

This information is not intended as legal advice.

Appendix B:

Law enforcement agency statements against immigration enforcement

1. Law Enforcement Immigration Task Force Letter opposing the SAFE Act
2. Law enforcement associations, chiefs of police, and sheriffs letter opposing the SAFE Act
3. National City Chief of Police letter supporting the CA TRUST Act
4. San Diego Chief of Police letter supporting the CA TRUST Act
5. National Immigration Law Center "Why Police Chiefs Oppose Arizona's SB1070"
6. Police Executive Research Forum "Police and Immigration: How Chiefs are Leading their Communities through the Challenges"



February 10, 2015

The Honorable Trey Gowdy
Chairman, Subcommittee on Immigration and Border Security
1404 Longworth House Office Building
Washington, DC 20515

The Honorable Zoe Lofgren
Ranking Member, Subcommittee on Immigration and Border Security
1401 Longworth House Office Building
Washington, DC 20515

Dear Chairman Gowdy and Ranking Member Lofgren:

We, the undersigned law enforcement officers, write to express our opposition to the Strengthen and Fortify Enforcement (SAFE) Act, which was previously introduced in the 113th Congress as H.R. 2278. By requiring state and local law enforcement to become immigration agents, the SAFE Act distracts local law enforcement from our core public safety mission.

Immigration enforcement is, first and foremost, a federal responsibility. Immigration enforcement at the state and local levels diverts limited resources from public safety. State and local law enforcement agencies face tight budgets and should not be charged with the federal government's role in enforcing federal immigration laws. Rather than apprehending and removing immigrants who have no criminal background or affiliation and are merely seeking to work or reunite with family, it is more important for state and local law enforcement to focus limited resources and funding on true threats to public safety and security.

Additionally, state and local law enforcement need the trust of our communities to do our primary job, which is apprehending criminals and protecting the public. Immigrants should feel safe in their communities and comfortable calling upon law enforcement to report crimes, serving as witnesses, and calling for help in emergencies. This improves community policing and safety for everyone.

The SAFE Act threatens to undermine trust between immigrant communities and state and local law enforcement. When state and local law enforcement agencies are required to enforce federal immigration laws, undocumented residents may become fearful that they, or people they know, will be exposed to immigration officials and are less likely to cooperate. This undermines trust between law enforcement and these communities, creating breeding grounds for criminal enterprises.

Rather than requiring state and local law enforcement agencies to engage in additional immigration enforcement activities, Congress should focus on overdue reforms to allow state and local law enforcement to focus their resources on true threats — dangerous criminals and criminal organizations. We believe that state and local law enforcement must work together with federal authorities to protect our communities and that we can best serve our communities by leaving the enforcement of immigration laws to the federal government.

We continue to recognize that what our broken system truly needs is a permanent legislative solution. We believe the SAFE Act is the wrong approach. Our immigration problem is a national problem deserving of a national approach.

One of the key lessons learned from past reform efforts is that *all* parts of our complex immigration system are interrelated, and must be dealt with in a cohesive manner, or we will see the results of unintended consequences and will need to revisit the issues again in the future as the failings become apparent. Movement to a piecemeal, enforcement-only model that foists responsibilities on state and local law enforcement is not the answer. The 114th Congress has a tremendous opportunity to fix our broken immigration system, advancing reforms that will help the economy and secure our borders. We look forward to continuing this positive discussion on how best to move forward with passing broad immigration reform into law.

Sincerely,

Chief J. Thomas Manger, President, Major Cities Chiefs Police Association (MCCA)

Chief Art Acevedo, Austin, Texas, Police Department

Chief Richard Biehl, Dayton, Ohio, Police Department

Chief Chris Burbank, Salt Lake City, Utah, Police Department

Sheriff Adell Dobey, Edgefield Country, South Carolina, Sheriff's Office

Sheriff Clarence Dupnik, Pima County, Arizona, Sheriff's Office

Sheriff Tony Estrada, Santa Cruz County, Arizona, Sheriff's Office

Sheriff Paul Fitzgerald, Story County, Iowa, Sheriff's Office

Assistant Chief Randy Gaber, Madison, Wisconsin, Police Department

Chief Ron Haddad, Dearborn, Michigan, Police Department

Chief James Hawkins, Garden City, Kansas, Police Department

Chief Dwight Henninger, Vail, Colorado, Police Department

Chief Michael Koval, Madison, Wisconsin, Police Department

Chief Jose Lopez, Durham, North Carolina, Police Department

Sheriff Leon Lott, Richland County, South Carolina, Sheriff's Office

Chief Ron Teachman, South Bend, Indiana, Police Department

Chief Mike Tupper, Marshalltown, Iowa, Police Department

Sheriff Lupe Valdez, Dallas County, Texas, Sheriff's Office

Sheriff Donny Youngblood, Kern County, California, Sheriff's Office

October 1, 2013

The Honorable John Boehner
Speaker, U.S. House of Representatives
H-232, U.S. Capitol
Washington, D.C. 20515

The Honorable Nancy Pelosi
Democratic Leader, U.S. House of Representatives
H-204, U.S. Capitol
Washington, DC 20515

Dear Speaker Boehner and Democratic Leader Pelosi:

We the undersigned law enforcement associations, chiefs of police, and sheriffs, write to express our strong opposition to the SAFE Act (H.R. 2278) and similar legislative proposals that expand state and local participation in the enforcement of immigration laws.

Congress has a historic opportunity to enact fair, commonsense reforms to our nation's immigration laws. This opportunity will be lost if the House of Representatives instead passes the SAFE Act. The SAFE Act is being billed as a law enforcement measure, but what it would actually do is diminish public safety and make our jobs as officers of the law more difficult.

The SAFE Act would radically alter the nature of federal immigration enforcement by vesting enforcement decisions in the hands of state and local law enforcement officials where it does not belong. Immigration is a solely federal policy and it demands a national solution.

Police agencies across the country have worked hard to build community partnerships, which are the cornerstone of preventing crime. The trust we strive for would be harmed by passage of the SAFE Act or similar legislation expanding state and local immigration enforcement. Studies have shown that Latino victims of crimes are 44% less likely to call the police because they fear the police will ask about their immigration status or the status of someone that they know (this proportion increases to 70% for undocumented immigrants).¹ In addition, victims of domestic violence and trafficking, in particular,

¹ University of Chicago, "Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement (May 2013), available at http://www.policylink.org/atf/cf/%7B97c6d565-bb43-406d-a6d5-eca3bbf35afo%7D/INSECURE_COMMUNITIES_REPORT_FINAL.PDF.

may often be dissuaded from contacting the police over fears of inquiries regarding immigration status.

In addition, the SAFE Act would divert scarce and critical resources away from the core mission of local police – to create safer communities. Requiring police to investigate and detain community members based solely upon their immigration status hurts public safety, and wastes limited law enforcement resources. And the complexity of immigration law, combined with the lack of adequate training and resources, increases the risk of civil liability for local police departments tasked with investigating and enforcing potential immigration law violations.

Moreover, the SAFE Act would also undermine the National Crime Information Center (NCIC) system by littering it with unverified, non-criminal immigration-related information. NCIC is a vital tool for the law enforcement community; by cluttering it with reams of non-criminal records, the SAFE Act would make it harder for our officers to rely on the system when doing their job. We see no legitimate law enforcement reason to add millions of civil immigration records to the NCIC. This provision of the SAFE Act would bog the system down and divert our agencies' resources away from criminal law enforcement priorities and public safety.

The SAFE Act is a misguided approach to reforming our immigration laws and it would make all of our communities less safe. Instead of diverting resources away from fighting crime, Congress should reaffirm that immigration enforcement is solely a federal responsibility.

For these reasons we urge you to oppose the SAFE Act and any similar legislation that would undermine our relationship with the public we are sworn to protect. Thank you for your attention and for your leadership in this historic process.

Sincerely,

Major Cities Chiefs Police Association (MCCA)

National Organization of Black Law Enforcement Executives (NOBLE)

Police Executive Research Forum (PERF)

Chief Jack Harris, Phoenix, Arizona, Police Department (Retired)

Chief Roberto Villaseñor, Tucson, Arizona, Police Department

Chief David Bejarano, Chula Vista, California, Police Department

Chief Sergio Diaz, Riverside, California, Police Department

District Attorney George Gascón, San Francisco, California

Chief William M. Lansdowne, San Diego, California, Police Department

Police Chief Michael Meehan, City of Berkeley, California, Police Department

Sheriff Ross Mirkarimi, City and County of San Francisco, California, Sheriff's Office

Chief Vicki Myers, Seaside, California, Police Department

Chief Gregory Suhr, San Francisco, California, Police Department

Chief Jane Castor, Tampa, Florida, Police Department

Sheriff Jerry L. Demings, Orange County, Florida, Sheriff's Office

Chief Manuel Orosa, Miami, Florida, Police Department

Chief John F. Timoney, Miami, Florida, Police Department (retired) & Commissioner of the Philadelphia Police Department (retired)

Sheriff Mark Curran, Jr., Lake County, Illinois, Sheriff's Office

Sheriff Bill McCarthy, Polk County, Iowa, Sheriff's Office

Chief Michael W. Tupper, Marshalltown, Iowa, Police Department

Chief J. Thomas Manger, Montgomery County, Maryland, Police Department

Commissioner Edward F. Davis, Boston, Massachusetts, Police Department

Sheriff Craig D. Apple, Sr., Albany County, New York, Sheriff's Office

Chief Richard Biehl, Dayton, Ohio, Police Department

Commissioner Charles H. Ramsey, Philadelphia, Pennsylvania, Police Department

Chief Art Acevedo, Austin, Texas, Police Department

Chief Greg Allen, El Paso, Texas, Police Department

Chief Jeffrey Halstead, Fort Worth, Texas, Police Department

Sheriff Richard D. Wiles, El Paso, Texas, Sheriff's Office

Chief Chris Burbank, Salt Lake City, Utah, Police Department

Sheriff Ken Irwin, Yakima County, Washington, Sheriff's Office

Chief Noble Wray, Madison, Wisconsin, Police Department

Director Eduardo Gonzalez, United States Marshals Service (Retired)

CALIFORNIA
NATIONAL CITY
1887
INCORPORATED
OFFICE OF THE CHIEF OF POLICE

August 20, 2013

VIA FACSIMILE TO (916) 319-3745

Governor Edmund G. Brown, Jr.
c/o Assemblymember Tom Ammiano, Chair
Assembly Committee on Public Safety
1020 N Street, Room 111
Sacramento, CA 95814

Re: The TRUST Act (AB 4) – SUPPORT

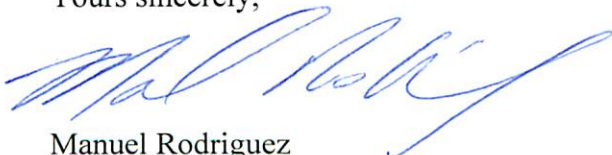
Dear Governor Brown:

I write in strong support of the TRUST Act (AB 4-Ammiano), which will reform California's participation in the controversial "Secure" Communities (S-Comm) deportation Program. Since its inception, S-Comm has led to the deportation of over 98,500 California residents—more than any other state. Unfortunately, this has resulted in documented and undocumented immigrants who are victims or witnesses to crime being fearful of cooperating with police, since any contact can potentially result in separation from their families and deportation. The excessively wide net cast by S-Comm undercuts community policing strategies and undermines the ability of local law enforcement to build trust with the immigrant communities they serve.

The TRUST Act sets a reasonable standard for California's participation in S-Comm, returning the program to its original intent by limiting the focus of immigration enforcement efforts and therefore rebuilding the community trust that S-Comm eroded. As amended, the bill recognizes your concerns by allowing law enforcement discretion to detain individuals for a long list of crimes, including the specific crimes you listed in your veto message in 2012.

For these reasons, I respectfully urge you to sign the amended TRUST Act (AB 4-Ammiano). The amended TRUST Act is a sensible solution that will allow us to provide a safer community for all without sacrificing the protection of the dignity of every Californian.

Yours sincerely,



Manuel Rodriguez
Chief of Police

National City Police Department
1200 National City Boulevard, National City, CA 91950-4302
619/336-4400 Fax 619/336-4525 www.nationalcityca.gov





THE CITY OF SAN DIEGO

IN REPLYING
PLEASE GIVE
OUR REF. NO.
191400001

July 30, 2013

VIA FACSMILE TO (916) 558-3160
The Honorable Jerry Brown
Governor, State of California
State Capitol Building
Sacramento, CA 95814

Re: The TRUST Act (AB 4) – Request for Signatures

Dear Governor Brown,

I write in support of the TRUST Act (AB 4 - Ammiano) which I believe will clarify California's participation in the "Secure" communities deportation program. This bill will provide a clear direction for local law enforcement agencies, and will allow local control while still preventing serious felons from being released back into our communities. The Trust Act will ease the unfair budgetary burden which the program places on local governments.

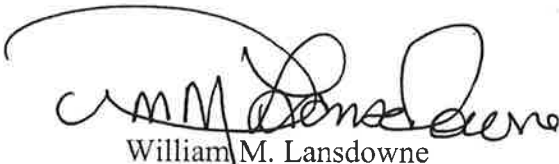
The "Secure" Communities program has diminished trust in our immigrant communities of local law enforcement. This has resulted in less cooperation and conflict for immigrant victims and witnesses of crime.

It is my opinion that the "Secure" communities program has reduced the number of victims and witness in immigrant communities and thus made our communities less safe.

The Trust Act sets reasonable limits on government "detainer" requests and allows for local control to be established.

I am in support of AB 4.

Sincerely,



William M. Lansdowne
Chief of Police

SAN DIEGO POLICE DEPARTMENT
CHIEF'S OFFICE
1401 BROADWAY, SAN DIEGO, CA 92101
PHONE: (619) 531-2777 • FAX: (619) 531-2530



Why Police Chiefs Oppose Arizona's SB 1070

JUNE 2010

The National Immigration Law Center is co-lead counsel in a class action suit challenging Arizona SB 1070, the claims for which include that SB 1070 is preempted by the U.S. Constitution and federal law and unconstitutionally violates the rights to freedom of speech, to travel, to be free from unlawful search and seizure, and to equal protection of the law through its promotion of discrimination based on race and national origin.¹ On June 4, 2010, counsel for the lawsuit's plaintiffs lodged a motion for preliminary injunction to enjoin implementation of SB 1070.² As exhibits to the preliminary injunction brief, NILC filed the declarations of three current and former police chiefs: Chief Samuel Granato of the Yakima, Washington, Police Department; Chief George Gascón of the San Francisco, California, Police Department; and Eduardo Gonzalez, former director of the United States Marshals Service and former chief of the City of Tampa, Florida, Police Department. Because these police chiefs have decades of law enforcement experience, their declarations are instructive in analyzing the effects SB 1070 will have, particularly with regard to public safety and racial profiling. The following excerpts are taken from the declarations of these police chiefs.

■ Former director of the United States Marshals Service and former chief of the City of Tampa, Florida, Police Department, Eduardo Gonzalez

"In my opinion, SB 1070 is a dangerous law that will cause far more harm than it is worth. It will divert precious police resources away from fighting crime, create rampant distrust of police in immigrant communities, and lead to unlawful racial and ethnic profiling.

"The law puts police officers in an untenable situation because it requires that they enforce immigration laws to the fullest extent permitted by federal law or risk being sued. SB 1070 divests local officers of the discretion to determine how best to ensure the safety of the community and retain the trust of the immigrant population by mandating that they enforce immigration laws. . . .

"[P]ublic safety will be negatively impacted by implementation of SB 1070 because it causes diversion of critical and already strained police resources away from the task of pursuing serious and violent crimes into the complicated and vague task of enforcing immigration laws. . . .

"[B]ased on my 34 years of law enforcement experience, I believe it will be extremely difficult to construct a training program for enforcement of SB 1070 that will successfully prevent officers from resorting to using racial and ethnic appearance to form the requisite suspicion. . . .

"[D]istrust of law enforcement will be created whether or not community members have legal status . . . because immigrant families and communities are typically made up of both those with lawful status and those without"

¹ Complaint for Declaratory and Injunctive Relief, *Friendly House et al. v. Whiting et al.*, No. CV 10-1061 (D. Ariz. May 17, 2010), available at www.nilc.org/immlawpolicy/LocalLaw/complaint_final-2010-05-17.pdf.

² Plaintiffs' Motion for a Preliminary Injunction at 2, *Friendly House et al. v. Whiting et al.*, No. CV-10-01061-MEA (D. Ariz. June 4, 2010), available at www.nilc.org/immlawpolicy/LocalLaw/Friendly-House-v-Whiting-PI-MotionBrief-2010-06-04.pdf.



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■ Chief of the San Francisco, California, Police Department, George Gascón

“... SB 1070 ... creates a resource allocation problem. Police departments in Arizona, already spread thinly and underfunded, now have an added responsibility — to enforce federal immigration law. ... SB 1070 diverts resources from the primary mission of ensuring public safety and requires that police undertake the complicated task of checking for federal immigration status. ... [P]olice officers cannot take on immigration enforcement without taking substantial time away from priorities that are more central to a local law enforcement agency, such as investigating and preventing violent crimes and property crimes. ...

“SB 1070 will threaten public safety because it will cause immigrant communities to distrust the police. ... As a result, victims of crimes, such as domestic violence, will be reluctant to contact the police because of fear that such contact will lead to investigations into the immigration status of the victim, her family members, neighbors, or other persons close to the victim. ...

“[O]ut of fear of deportation of a family member or neighbor, even many victims of crimes who are in legal immigration status will decide not to contact the police.

“The resulting harm to public safety will not only impact immigrant communities, but all communities in the state of Arizona because it creates a vacuum in law enforcement. This will embolden the criminal element because they will have less reason to be concerned about being reported by victims or witnesses in immigrant communities, and less reason to fear any consequences for criminal conduct.

“If SB 1070 goes into effect, there will be a greater incidence of pretextual stops of individuals of color in Arizona as officers will use pretextual reasons to stop or question individuals they believe to be here illegally. If an officer is motivated by race or ethnicity he/she can easily find a valid pretext for encountering an individual, whether by following a car until a minor traffic violation occurs or by approaching a pedestrian for ‘consensual’ questioning.”

■ Chief of the Yakima, Washington, Police Department, Samuel Granato

“My job as a law enforcement officer is compromised when the individuals I am charged to serve and protect are afraid to have contact with me. This is exactly what will happen as a result of SB 1070’s mandate to investigate immigration status. ...

“[SB 1070] further victimizes some of the most vulnerable victims of crime. ...

“[W]hen, as a result of their involvement in immigration enforcement, local police officers come to be viewed as arms of the federal immigration enforcement system, immigrant communities will grow to distrust the police and will likely avoid contact with law enforcement out of fear that it could lead to their deportation or the deportation of a family member, friend, or neighbor. ...

“SB 1070 legislates in an area that should be reserved exclusively for the federal government. Immigration enforcement is a federal responsibility and one of the problems with having the state usurp federal authority to enforce immigration laws is the risk that federal immigration law won’t be enforced uniformly by state law enforcement officials.

“In my opinion it is not possible to construct a training that would sufficiently prepare officers to enforce SB 1070 in a uniform manner.

“I do not believe that SB 1070 can be enforced in a racially neutral manner.”

Police and Immigration:

How Chiefs Are Leading their Communities through the Challenges



Debra A. Hoffmaster
Gerard Murphy
Shannon McFadden
Molly Griswold

Police and Immigration:

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Police Executive Research Forum

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POLICE EXECUTIVE
RESEARCH FORUM

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Edited by Craig Fischer

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Cover and interior design by Dave Williams

*Immigration Summit Participants' Recommendations
For Local Police*

1. Officers should be prohibited from arresting or detaining persons for the sole purpose of investigating their immigration status.
2. Officers should arrest persons who violate the criminal laws of their jurisdictions without regard to the immigration status of the alleged perpetrator or the victim.
3. Local police must uphold the Constitutional and civil rights of persons regardless of their immigration status.
4. Local police must protect crime victims and witnesses regardless of their immigration status, and should encourage all victims and witnesses to report crimes, regardless of their immigration status.
5. Local police should engage immigrant communities in dialogue about department policies and programs.
6. Local police agencies should educate their communities about their role in immigration enforcement, especially the legal authorities and responsibilities of local police and federal law enforcement.
7. Local police should develop comprehensive written policies and procedures regarding handling of undocumented immigrants.
8. Local police agencies should monitor indicators of racial profiling by employees, investigate violations, and sanction offenders.
9. Local police agencies should become knowledgeable about programs such as 287(g), Secure Communities, and state or local initiatives to ensure that the programs meet the agency's specified goals for participation.

Appendix C:

Advocating against local law enforcement and ICE entanglement

1. Letter to Secretary Jeh Johnson re: Priority Enforcement Program
2. Model policy to address the Priority Enforcement Program
3. ACLU letter to San Bernardino County Sheriff McMahon re: Participation in ICE's Priority Enforcement Program and ICE Interviews in Jails
4. Local policies excluding ICE from jails

June 17, 2015

The Honorable Jeh Johnson
Secretary, Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, DC 20528

Via U.S. mail and electronic mail

Dear Secretary Johnson:

We write to address serious legal concerns with the implementation of Immigration and Customs Enforcement's (ICE's) new Priority Enforcement Program (PEP), particularly with respect to the continuing use of immigration detainers. The new PEP detainer form (I-247D) and notification form (I-247N), which ICE released to the public on June 12, 2015, raise these principal concerns:

- A. The new detainer form gives no indication that ICE will limit detention requests to "special circumstances," as described in your November 2014 memo. Your memo directed ICE to discontinue use of detainers except in "special circumstances," but nothing in the new detainer form appears to give effect to that limiting language.
- B. The new detainer form does not cure the legal deficiencies of previous immigration detainer forms, which courts have found violate the Fourth Amendment and expose both ICE and local law enforcement agencies to liability.
- C. The new notification form will continue to entangle local police in immigration enforcement, in direct contravention of the recent recommendation of the President's Task Force on 21st Century Policing calling for federal immigration enforcement to be "decoupled" from routine local policing; the form may also expose DHS and local law enforcement agencies to liability for extended detentions and transfers of custody that do not meet the Fourth Amendment's requirements.

We call on you to completely discontinue ICE's use of immigration detainers to request extended detention and to implement the recommendations of the President's Task Force on 21st Century Policing by cancelling plans for the use of routine notification requests. Short of discontinuing detainers and notifications, ICE and the local law enforcement agencies that respond to detainers or notifications will continue to incur liability for making illegal arrests and jeopardize policy-community trust.

A. The New Form Fails to Limit Detainers to “Special Circumstances.”

Your November 2014 memo directed ICE officers to issue immigration detainers only in “special circumstances,” yet nothing about the new detainer form reflects that limitation. Rather, the new detainer form suggests that an ICE officer may issue it whenever he or she alleges probable cause to believe the subject is removable and determines that the subject falls into one of the Department’s enforcement priorities. Neither condition constitutes a “special circumstance” under any reasonable definition of the term. Absent guidance on the meaning of special circumstances and clear delineation on the detainer form itself, we are concerned that ICE agents will continue to issue detainers in *ordinary* circumstances, as if agency policy had not changed.

B. The New Detainer Form Does Not Cure the Legal Problems that Have Resulted in Liability for ICE and Local Law Enforcement.

The U.S. Constitution and the Immigration and Nationality Act (“INA”) set forth the circumstances in which a warrantless arrest may be made for immigration purposes.¹ The revised detainer form does not reflect these legal constraints. Instead, the form appears only to reflect ICE’s current practices, which fail to comport with fundamental protections under the Fourth Amendment and the limits on warrantless arrests under the INA.

Last year, after a series of federal court decisions holding ICE and local law enforcement agencies liable for detaining people beyond their release times on immigration detainers, hundreds of law enforcement agencies in counties and cities across the country stopped complying with immigration detainers. Many of them, including nearly all of the 58 counties in California, rightly adopted policies that they will comply with an immigration detainer only if it is accompanied by a judicial warrant or a judicial determination of probable cause. ICE’s new detainer form, however, does not require a judicial warrant, judicial determination of probable cause, or even an individual, particularized statement of probable cause. Therefore, ICE’s new detainer form fails to meet the Fourth Amendment’s basic requirements, and it perpetuates the constitutional deficiencies that have drawn just criticism from localities across the country.

First, ICE has not revised the detainer form (or its agents’ practices) to satisfy the constitutional requirement of a prompt judicial probable cause hearing following arrest. As a result, ICE detainers continue to violate the Fourth Amendment, and law enforcement agencies may not lawfully comply with them.

The Supreme Court has long held that “the Fourth Amendment requires a *judicial* determination of probable cause as a prerequisite to extended restraint of liberty following arrest.” *Gerstein v. Pugh*, 420 U.S. 103, 114 (1975) (emphasis added). “[T]his

¹ Prolonging detention after a person would otherwise be entitled to release based upon an immigration detainer amounts to a warrantless arrest. See, e.g., *Miranda-Olivares v. Clackamas Cnty.*, No. 12-02317, 2014 WL 1414305, at *10 (D. Or. Apr. 11, 2014) (slip op.) (noting that prolonged detention based on an immigration detainer “constituted a new arrest, and must be analyzed under the Fourth Amendment.”).

determination must be made . . . *promptly* after arrest.” *Id.* at 125 (emphasis added).² However, ICE’s new detainer form (like its predecessors) does not contemplate a *prompt* probable cause hearing before a detached, neutral judicial official after arrest on the detainer. In fact, it does not contemplate *any* judicial determination of probable cause at *any* time, in spite of the Constitution’s clear requirements. *See* 8 C.F.R. § 287.3 (describing post-arrest procedures and making no provision for a judicial probable cause determination).³ As a result, unless ICE changes its practices to ensure that a person arrested and detained on an immigration detainer is brought before a judicial official for a probable cause determination within 48 hours of arrest, detention by local law enforcement agencies for any period of time on an immigration detainer is presumptively unconstitutional.⁴

Second, the new detainer form does not establish probable cause as constitutionally required to authorize detention. As an initial matter, several courts have held that the Fourth Amendment does not permit state or local officers—who generally lack civil immigration enforcement authority—to imprison people based on ICE detainers.⁵ These decisions rely on the Supreme Court’s reminder in *United States v. Arizona*, 132 S. Ct. 2492 (2012), that “it is not a *crime* for a removable alien to remain present in the United States,” and that “[i]f the police stop someone based on nothing more than possible removability, the usual predicate for an arrest is absent.” *Id.* at 2505 (emphasis added). Moreover, in some jurisdictions, state and local law enforcement officials are constitutionally or statutorily prohibited from enforcing federal civil law; by

² It is well settled that civil immigration arrests, like criminal arrests, must comply with the Fourth Amendment. *See United States v. Brignoni-Ponce*, 422 U.S. 873, 881-82 (1975). In fact, ICE’s predecessor, the INS, specifically recognized that *Gerstein* applies to civil immigration arrests: Responding to comments on proposed changes to 8 C.F.R. § 287.8(c) (“Conduct of arrests”), the INS acknowledged that “[t]he Service is clearly bound by . . . [judicial] interpretations [regarding arrest and post-arrest procedures], including those set forth in *Gerstein v. Pugh*.” 59 Fed. Reg. 42406-01 (1994).

³ The only form of post-arrest review that ICE provides is an examination conducted by a non-judicial enforcement officer within 48 hours after the subject of the detainer is taken into ICE custody. *See* 8 U.S.C. § 1357; 8 C.F.R. § 287.3. In practice, this means the subject of a detainer may be held for up to four days (48 hours in local law enforcement custody and 48 hours in ICE custody)—or even longer “in the event of an emergency or other extraordinary circumstance,” 8 C.F.R. § 287.3(d)—prior to receiving *any* review at all. Moreover, the purpose of ICE’s examination is to make a charging and custody determination—not to review the legality of the arrest. *Id.* § 287.3(a)-(b), (d).

⁴ *See, e.g.*, Michael Kagan, “Immigration Law’s Looming Fourth Amendment Problem,” *Georgetown Law Journal*, Vol. 104, Forthcoming, available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2568903.

⁵ *See, e.g.*, *Villars v. Kubiatowski*, 45 F. Supp. 3d 791, 807-08 (N.D. Ill. 2014) (holding that plaintiff stated a Fourth Amendment claim where defendants “lacked probable cause [to believe] that Villars violated federal criminal law”); *People ex rel Swanson v. Ponte*, 46 Misc. 3d 273, 278, 994 N.Y.S.2d 841, 844 (Sup. Ct. 2014) (granting habeas petition because “there is . . . no authority for a local correction commissioner to detain someone based upon a civil determination” of removability); *Buquer v. City of Indianapolis*, 797 F. Supp. 2d 905, 918 (S.D. Ind. 2011) (preliminarily enjoining section of state law that “authorize[d] state and local law enforcement officers to effect warrantless arrests” based on ICE detainers because permitting arrests “for matters that are not crimes” would contravene the Fourth Amendment), *permanent injunction granted*, 2013 WL 1332158, at *8, *10 (S.D. Ind. Mar. 28, 2013) (unpub.) (concluding that an ICE detainer, “without more, does not provide the usual predicate for an arrest,” and that “authoriz[ing] state and local law enforcement officers to effect warrantless arrests for matters that are not crimes . . . runs afoul of the Fourth Amendment”).

issuing detainers to these jurisdictions, ICE may be asking those officials to violate state law.⁶

Even setting these issues aside, the new detainer form does not establish that ICE has made an *individualized* determination of probable cause, based on the facts and circumstances of a particular case, as the Fourth Amendment requires. See *Maryland v. Pringle*, 540 U.S. 366, 371 (2003) (“[T]he substance of all the definitions of probable cause is a reasonable ground for belief of guilt, . . . and . . . the belief of guilt must be particularized with respect to the person to be searched or seized.”) (internal quotation marks and citations omitted). Therefore, local law enforcement agencies may not rely on an ICE detainer to hold individuals in their custody for any period of time.

The revised detainer form, unlike a judicial warrant or affidavit of probable cause, contains a boilerplate series of check-boxes:

DHS HAS PROBABLE CAUSE THAT THE SUBJECT IS A REMOVABLE ALIEN. THIS DETERMINATION IS BASED ON:

- ☐ a final order of removal against the subject;
- ☐ the pendency of ongoing removal proceedings against the subject;
- ☐ biometric confirmation of the subject’s identity and a records check of federal databases that affirmatively indicate, by themselves or in addition to other reliable information, that the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law; and/or
- ☐ statements made voluntarily by the subject to an immigration officer and/or other reliable evidence that affirmatively indicate the subject either lacks immigration status or notwithstanding such status is removable under U.S. immigration law.

DHS revised I-247D form. Thus, instead of providing for the individualized, fact-based determination that the Fourth Amendment requires, the new detainer form—particularly with respect to checkboxes three and four—offers only boilerplate assertions describing generic investigative steps or the possession of “reliable evidence” without describing what evidence forms the basis of the agent’s conclusion. This conclusory, check-a-box approach to probable cause is the antithesis of the individualized, fact-based determination required by the Constitution.

Further, the third and fourth boxes appear to describe the same biometric-based investigatory practices used by ICE agents under Secure Communities, which rightly been the focus of sustained criticism from community groups, local leaders, and law enforcement officials across the country. Under Secure Communities, ICE routinely issued detainers based on cursory or inconclusive database searches, using the detainer as “a stop gap measure. . . to give ICE time to investigate and determine whether somebody’s an alien” Oral Argument Transcript, ECF #79, *Galarza v. Szalczyk*,

⁶ See, e.g., *Swanson*, 46 Misc. 3d at 276-77 (holding that Commissioner of Corrections violated the New York City administrative code by holding petitioner on an ICE detainer).

No. 10-06815 (E.D. Pa. Jan. 10, 2012).⁷ And, despite the new detainer form's incorporation of the term "probable cause," ICE still takes the position in litigation that probable cause is not legally required. The detainer form does not reflect that ICE has in fact changed its investigatory practices and trained its agents in the minimum evidentiary basis required prior to issuing a detainer.

ICE's failure to ensure that its agents have made a constitutionally adequate probable cause determination before issuing a detainer continues to subject the agency to liability and casts serious doubt on whether local law enforcement agencies can rely on ICE's bald assertions that the new detainer forms are supported by probable cause.

Third, because ICE still does not require its agents to obtain a judicial warrant or probable cause determination before issuing a detainer, the detainer request is lawful only if it complies with statutory limitations on ICE's *warrantless* arrest authority. *See Arizona*, 132 S. Ct. at 2506 ("If no federal warrant has been issued, . . . [ICE] officers have more limited authority."). Under the INA, ICE may *only* make warrantless arrests when (1) it has probable cause for the arrest and (2) it has determined the subject "is likely to escape before a warrant can be obtained for his arrest." 8 U.S.C. § 1357(a)(2).⁸

The detainer form does not establish—or even attempt to establish—that ICE has satisfied the statutory requirement that the subject is "likely to escape." *Id.* As with probable cause, ICE is required to make an individualized determination of flight risk prior to making a warrantless arrest or requesting that another agency make such arrest on its behalf. *See Mountain High Knitting, Inc. v. Reno*, 51 F.3d 216, 218 (9th Cir. 1995). Yet ICE makes no such individualized determination before issuing detainers. Nor could it. Because ICE uses detainers *only* against subjects in law enforcement custody, *see* 8 C.F.R. § 287.7(a), they are by definition *unlikely* to escape. In issuing detainers without making a flight risk determination—and thereby asking local correctional officials to make warrantless immigration arrests where ICE agents themselves could not legally do so—ICE exceeds the limits of its statutory authority. Simply put, ICE agents cannot delegate arrest powers to local law enforcement agencies that Congress never gave ICE in the first place.

In conclusion, because the new detainer form is not predicated on a *judicial* probable cause determination, fails to provide an individualized probable cause assessment in each case, and ignores the limitations on ICE's own warrantless arrest authority, it does not comply with minimal constitutional requirements and is legally insufficient to authorize detention.

⁷ *See also* Brief of Federal Defendants, *Ortega v. ICE*, No. 12-6608 (6th Cir. filed Apr. 10, 2013) (stating, in a case involving a U.S. citizen held on a detainer, "the *purpose* of issuing the detainer was to allow [ICE] time to conduct an investigation that could have discovered whether Plaintiff-Appellant was removable or was, in fact, a U.S. citizen.") (emphasis in original).

⁸ These are the minimum statutory requirements for ICE to make a warrantless arrest. As described above, state and local law enforcement agencies may be subject to additional constraints in making immigration-related arrests.

Under PEP, compliance with immigration detainers remains voluntary. *Galarza v. Szalczyk*, 745 F.3d 634, 639-45 (3d Cir. 2014). Accordingly, any unlawful detention pursuant to a detainer exposes both DHS and local law enforcement agencies to liability.⁹ Because, as described above, the new detainer form perpetuates many of the legal deficiencies of the current detainer form, it will continue to subject local law enforcement agencies to liability.

C. The New Notification Form Undercuts Community Policing and May Lead to Unlawful Detentions and Transfers.

DHS's new notification form also raises serious concerns. Routine use of notification requests will perpetuate the entanglement of local police in immigration enforcement, which created such controversy under the Secure Communities program. Many of the concerns raised by state and local officials and advocates regarding Secure Communities—including concerns about destroying police-community trust and making crime victims unwilling to contact police—remain the same whether police facilitate deportation by detaining people on immigration detainers or by notifying ICE about their release dates and home addresses. These concerns led the President's Task Force on 21st Century Policing to recommend that federal immigration enforcement be “decouple[d]” from local policing.¹⁰ ICE's use of notification requests through PEP directly contradicts the Task Force's recommendation.

Further, DHS's notification requests also raise legal concerns. To the extent that local law enforcement agencies comply with notification requests in a way that extends an individual's detention for any period—including extending the time required to process someone for release from custody while awaiting pick-up from ICE—such policies will raise the same Fourth Amendment concerns as immigration detainers. *See Rodriguez v. United States*, 575 U.S. ---, 135 S. Ct. 1609, 1614, 1616 (2015) (seven- or eight-minute prolongation of detention without new constitutionally adequate justification violates the Fourth Amendment). Moreover, to the extent local law enforcement agencies facilitate transfers to ICE based on notification requests, such

⁹ *See Galarza*, 745 F.3d at 645 (county could be held liable for violating plaintiff's Fourth Amendment and due process rights when it kept him in jail on an ICE detainer for 3 days after he posted bail); *Morales v. Chadbourne*, 996 F. Supp. 2d 19, 39-40 (D.R.I. 2014) (Director of the Rhode Island Department of Corrections could be held liable for violating plaintiff's Fourth Amendment and due process rights by keeping her in jail on an ICE detainer for 24 hours after she was ordered released on recognizance); *Miranda-Olivares*, 2014 WL 554478, *9-*11 (county violated the Fourth Amendment by detaining plaintiff on an ICE detainer after she became eligible for release from criminal custody); *Villars*, 45 F. Supp. 3d 791, 802, 808 (denying motion to dismiss claims that county and village defendants violated plaintiff's Fourth Amendment and due process rights by detaining him on an ICE detainer); *see also* Defendant ICE's Motion to Dismiss, *Gonzalez v. ICE*, No. 13-4416 at 10, 14-17, 23-24 n.9 (C.D. Cal. filed Mar. 10, 2014), available at https://www.aclu.org/sites/default/files/field_document/gonzalez_v_ice-defendants_notice_of_motion_to_dismiss.pdf (stating that it is the responsibility of a local law enforcement official to “decide, in his or her discretion, [whether] to comply with ICE's immigration detainer,” and arguing that it was the county sheriff, not ICE, who bore ultimate responsibility for plaintiffs' detention on ICE detainers).

¹⁰ *See* President's Task Force on 21st Century Policing, Final Report at 18 (May 2015), available at http://www.cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf.

transfers are arrests that must be supported by probable cause—a standard clearly not met by the new notification form, which simply states that DHS “suspects” that the subject is deportable.

Given these ongoing deficiencies, we ask that you abandon the I-247D and I-247N forms and discontinue the use of detainers and notification requests immediately.

Sincerely,

Advancing Justice – AAJC
Advancing Justice - Asian Law Caucus
American Civil Liberties Union, Immigrants’ Rights Project
Immigrant Defense Project
Immigrant Legal Resource Center
National Immigrant Justice Center
National Immigration Law Center
National Immigration Project of the National Lawyers Guild
National Day Laborer Organizing Network
New Orleans Workers’ Center for Racial Justice
Southern Poverty Law Center
Washington Defender Association’s Immigration Project

CC: Alejandro Mayorkas, Deputy Secretary, Department of Homeland Security
Sarah Saldaña, Director, Immigration and Customs Enforcement

<p style="text-align: center;">[NAME] COUNTY</p> <p style="text-align: center;">SHERIFF'S DEPARTMENT</p> <p style="text-align: center;">GENERAL ORDER</p>	NUMBER:
	RELATED ORDERS:
	ISSUE DATE:
	REVISION DATE:
CHAPTER:	SUBJECT: ICE and CBP Policy

1. **PURPOSE:** The purpose of this order is to provide deputies with guidelines on their duties and responsibilities associated with immigration law, enforcement, arrests, and detentions.
2. **POLICY:** The [NAME] County Sheriff's Department will equally enforce laws and serve the public without consideration of immigration status. Except as specifically outlined in this General Order, the immigration status of a person, or the lack of immigration documentation, shall have no bearing on the manner in which staff execute their duties.

Under no circumstances shall a person be contacted, detained, or arrested by agency members based on his or her immigration status, whether known or unknown.

3. **DEFINITIONS:**
 - A. **IMMIGRATION AND CUSTOMS ENFORCEMENT:** The U.S. Department of Homeland Security's Immigration and Customs Enforcement Agency (ICE) has primary responsibility to investigate and enforce federal immigration laws.
 - B. **CUSTOMS AND BORDER PROTECTION:** The U.S. Department of Homeland Security's Customs and Border Protection Agency (CBP) is charged with all border-related security, regulatory and administrative missions.
 - C. **IMMIGRATION HOLD:** Immigration holds (also known as ICE holds) are requests by ICE to local law enforcement to hold detainees for additional time (maximum of 48 hours excluding weekends and holidays) after the criminal matter requires release to allow time for ICE to take the individual into immigration custody.
 - D. **REQUESTS FOR NOTIFICATION:** Requests by ICE to local law enforcement for notification when an individual is released from jail custody.
4. **ORDER:** When [NAME] County Sheriff's personnel encounter perceived immigration law violations, members shall be guided by the options set forth in this Order.
 - A. **IMMIGRATION STATUS:**
 1. A deputy's suspicion about any person's immigration status shall not be used as a basis to initiate contact, detain, or arrest that person.

2. A deputy may not inquire about a person's immigration status.
3. Sweeps intended solely to locate and detain potentially deportable immigrants shall not be conducted. Staff will not participate in ICE or CBP organized sweeps to locate and detain potentially deportable immigrant residents.

B. ESTABLISHING IDENTITY:

1. Deputies should make all attempts to identify any person they detain, arrest, or who come into the custody of the Sheriff's Department.
2. Acceptable forms of identification include, but are not limited to, student IDs, driver's licenses from any U.S. state or foreign country, municipal IDs issued by a U.S. jurisdiction, foreign passports, and consular ID cards. Individuals should not be detained solely for the purpose of establishing his or her identity.

C. IMMIGRATION HOLDS:

1. The [NAME] County Sheriff's Department shall not respond to ICE hold requests unless accompanied by a criminal arrest warrant signed by a federal magistrate.

D. CIVIL IMMIGRATION WARRANTS:

1. The [NAME] County Sheriff's Department shall not respond to any civil immigration warrants or ICE custody documents (I-200, I-203, I-205, and any listed in the National Crime Information Center Database (NCIC)) because these documents are not signed by a judge and are not based on a finding of probable cause for an alleged criminal law violation.

E. ICE NOTIFICATION REQUESTS

1. The [NAME] County Sheriff's Department shall not respond to any notification requests from ICE that seek information about a subject's scheduled release date.
2. At no time may the [NAME] County Sheriff's Department detain a subject for additional time beyond when the criminal matter allows release solely to notify ICE of the subject's release or to facilitate transfer to ICE.

F. ICE REQUESTS TO ACCESS [NAME] COUNTY'S INMATES, RECORDS & FACILITIES

1. Unless ICE or Customs and Border Patrol (CBP) agents have a criminal warrant, ICE or CBP agents shall not be given access to County facilities, records/databases, or individuals in County custody.
2. County personnel shall not expend County time or resources responding to ICE or CBP inquiries or communicating with ICE or CBP regarding individuals' booking information, hearing dates, incarceration status, release dates, home addresses, or other contact information.

G. EQUAL TREATMENT

1. Citizenship, immigration status, national origin, race, and ethnicity shall have no bearing on an individual's treatment in the jail (including but not limited to classification status, eligibility for work programs, his or her eligibility for alternative to incarceration programs), his/her right to release on bail, or on decisions to initiate stops or make arrests.

H. U VISA CERTIFICATION

1. The Victims of Trafficking and Violence Prevention Act (VTVPA) created the U Visa, a nonimmigrant visa for victims of certain crimes who have been, or are likely to be, helpful to law enforcement in the investigation or prosecution of a crime. The purpose of this is two-fold. First, it enhances law enforcement's ability to investigate and prosecute crimes. Second, it furthers humanitarian interests by protecting victims of crimes.
2. As part of the U Visa application, Congress designated certifying government agencies, including any local authority charged with investigating or prosecuting criminal activity, to complete and sign the Certification, known as the Form I-918B or Supp B. This certification provides an applicant the ability to apply for a U Visa, but does not guarantee that the U Visa will be granted.
3. The [NAME] County Sheriff's Department shall consider a certification request and sign the certification if the following elements are met: 1) the individual is a victim of a qualifying crime and 2) the individual has been helpful, is being helpful, or is likely to be helpful, in the investigation/prosecution of that crime.



**SAN BERNARDINO
COMMUNITY
SERVICE CENTER, INC**
560 N. ARROWHEAD AVE, SUITE 9A
SAN BERNARDINO, CA 92401
(909) 885-1992
abcsc.org@gmail.com

December 4, 2015

BY EMAIL AND FIRST CLASS MAIL

Sheriff John McMahaon
San Bernardino County Sheriff
175 South Lena Road
San Bernardino, CA 92415-0037

Re: Participation in ICE's Priority Enforcement Program and ICE Interviews in Jails

Dear Sheriff McMahan,

We write to express concerns about the current status, and planned evolution, of the Department of Homeland Security's Priority Enforcement Program (PEP) in San Bernardino County. We would welcome the opportunity to meet with you to discuss our concerns, in advance of your planned finalization of related policies in the coming weeks.

According to the Temporary Operating Procedure, which you have released to us (attached to this letter), your department will "assist ICE personnel when possible" in the implementation of PEP. The Sheriff's Department will grant ICE full access to jail facilities for investigations of inmates, including for the review of inmate jackets, JIMS data, release lists and interviews; and provide "reasonable notice of a pending release of an inmate" in the event of a I-247N Request for Notification by ICE. Despite your cooperation with ICE on the Notification of individual detainees, your Temporary Operating Procedure affirmatively refuses to notify inmates that ICE is interested in them, or that ICE has submitted a Request for Notification.

We welcome your recognition, in the Temporary Operating Procedure, that any ICE actions within the San Bernardino jails must be confined by federal and state law limitations, including those compelled by the California TRUST Act. We further welcome your continued refusal to honor ICE Immigration Detainers (I-247D) or to transfer directly any inmates from County custody to ICE custody; and your commitment to ensure the detainee's full release from custody before any effort by ICE to arrest or detain a detainee. However, we remain strongly concerned that the current policy jeopardizes the rights and protections of immigrants in San Bernardino County; risks the ability of the San Bernardino community to rely on local law enforcement for their protection; and may expose San Bernardino County to legal liability.

We likely agree that it is not the Sheriff's role to enforce immigration law. For this reason, we are concerned that the Sheriff Department's facilitation under PEP of ICE interviews or jail-based transfers for the purpose of *civil* immigration enforcement improperly places the Sheriff's Department squarely in the role of enforcing immigration law. Aside from the legal concerns with this, which we address below, such cooperation undermines community trust in

the Sheriff's Department and draws on scarce jail resources which should be allocated to public safety and jail management functions.

In light of these concerns, we strongly urge your Department to reject the PEP program. If, however, you do agree to participate in PEP despite the risks, we urge you to incorporate protections to minimize the harms to the immigrant community and public safety, and to lessen the exposure of the Sheriff's Department's to legal liability resulting from such participation.

Recommendations

(1) Do not participate in the Priority Enforcement Program. Keep local law enforcement authorities out of federal civil immigration enforcement.

San Bernardino County law enforcement will be more effective if all members of the community can trust that the role of the Sheriff's Department is to protect public safety, not to facilitate deportation and the separation of families. A recent study by the University of Illinois found that as a result of increased cooperation between police and ICE, 44 percent of Latinos surveyed reported being less likely to contact law enforcement if they have been a victim of crime.¹ This figure rises to 70 percent when only undocumented immigrants are surveyed.²

This is why California passed the TRUST Act and why numerous localities across the country have limited collaboration with federal immigration enforcement. With communities and local authorities increasingly cognizant of the risks of direct collaboration with ICE in immigration enforcement, there has been a trend in more recent enactments of TRUST ordinances towards even more limited cooperation between local law enforcement and ICE than that provided for under California law.³ We hope that San Bernardino County understands the chilling and harmful effect that collaboration with ICE on immigration enforcement has on the community and on the trust the community has in law enforcement.⁴

We urge you to not participate in PEP transfers of custody to ICE, nor to allow ICE access to detainees for interviews. Given the increasing advancements in law enforcement technology, including the sharing of database information among agencies, ICE can effectively conduct civil immigration enforcement without your department's assistance.⁵ ICE's primary

¹ Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, UNIVERSITY OF ILLINOIS AT CHICAGO (May 2013), available at http://www.policylink.org/sites/default/files/INSECURE_COMMUNITIES_REPORT_FINAL.PDF.

² *Id.*

³ See, e.g., "Text of Trust Acts," available at <http://www.catractact.org/text-of-trust-acts.html>.

⁴ See, e.g., William Landsdowne, *Keep Clear, Separate Roles for Law Enforcement and ICE*, THE SACRAMENTO BEE (July 25, 2015), available at <http://www.sacbee.com/opinion/op-ed/soapbox/article28641010.html>; Raul Peralez, *Notifying immigration about prisoners to be released is wrong*, SAN JOSE MERCURY NEWS (July 24, 2015), available at http://www.mercurynews.com/opinion/ci_28534505/raul-peralez-notifying-immigration-about-prisoners-be-released; William J. Bratton, *The LAPD fights crime, not illegal immigration*, THE LA TIMES, (Oct. 27, 2009), available at <http://articles.latimes.com/2009/oct/27/opinion/oe-bratton27>.

⁵ ICE will continue to receive biometrics information on County arrestees regardless of the Sheriff's Department's participation in PEP. Because it continues to receive this information, ICE is therefore notified about the arrest of any person in the Sheriff's Department's custody and has the tools it needs to track custody, case, and other information about that person for civil immigration enforcement purposes without the participation of the Sheriff's Department and the jails.

objective with PEP is to secure transfer of custody of individuals from the jail setting, yet ICE has the information and resources to apprehend individuals outside of the jail context and without the Sheriff's Department's participation. Transfer of custody makes ICE's work easier, but it is clearly not the only means for ICE to apprehend individuals and it can and should conduct its enforcement in a way that does not undermine and draw on the resources of local law enforcement. The political and legal risks for the engagement of local law enforcement in immigration enforcement are simply too great.

(2) Should your department nonetheless decide to participate in PEP, in order to ensure compliance with the Fourth Amendment and state law, we urge you to not perform in-custody transfers to ICE in response to a notification request.

As ICE has rolled out PEP in various parts of the country, it has made clear its intention to seek transfer of custody of persons for whom it places a notification request. While simple notification of release dates and times to ICE may not raise legal concerns, transfer of custody in this context does. This is because, like the detainer forms, the notification requests are not supported by a judicial warrant or judicial determination of probable cause, nor are they supported by any attestation of probable cause for arrest. However, transfers of custody to ICE once the person is eligible for release from custody will almost always extend a person's detention because it takes more time to process a person for release to another agency than it does to release them to the street.

Extending an individual's detention past the release time for any period of time constitutes a Fourth Amendment violation. *See Rodriguez v. United States*, -- U.S. --, 135 S.Ct. 1609 (2015) (seven- or eight-minute prolonged detention without constitutionally adequate justification violates the Fourth Amendment). It would also violate state law, which makes clear that the Sheriff's Department does not have authority to make a warrantless arrest of a person for civil immigration purposes. *See* Cal. Penal Code §§ 830.1 (arrest authority for "public offense"); 836 (warrantless arrest authority for "public offense"); 15 (definition of "public offense" does not include removal, which is the penalty for civil immigration violations). *See also* Cal. Penal Code § 4005 (Sheriff permitted to detain a person in county jail for federal authorities when person is committed to the jail under legal "process and order").

For these reasons, we urge you not to make any in-custody transfers to ICE. We advise you to establish a policy against in-custody transfers and provide that ICE can only make an arrest outside of jail doors.

(3) At a minimum, any notification of release dates to ICE, transfer of custody to ICE, and ICE access to inmates should comport with AB4 (Trust Act) criteria.

The intent of AB4 was to limit the circumstances in which local law enforcement resources would be used to facilitate deportation in order to minimize the impact that such cooperation has on police practices, community trust, and public safety. If your Department decides to engage in notification to ICE and transfer of custody to ICE, we urge you, at a minimum, to do so only for those individuals who are not protected by AB4. Similarly, if your Department decides to provide ICE access to detainees in the jails for interviews, such access

should, at a minimum, only be provided for individuals who are not protected by the AB4.⁶ In order to comport with AB4, the Sheriff's Department should ensure that it is AB4 compliant in every aspect of any jail-based collaboration with ICE.

This would be consistent with San Bernardino's past practice of ensuring that any notification and detention related to immigration enforcement complies with the Trust Act. In the wake of the passage of AB 4, the San Bernardino Sheriff's Department amended their then-existing 287G Memorandum of Understanding to comply with the Trust Act.⁷ We encourage the Department to ensure at least this limitation to any PEP implementation.

Further, there has been a growing trend towards even more limited cooperation between local law enforcement and ICE than that provided for under AB4 – with counties prohibiting cooperation altogether in the absence of a judicial warrant, providing a more limited subset of crimes for which cooperation with ICE would be permitted, or limiting the crimes to only felonies.⁸ The criteria established in the California TRUST Act should be minimum standards, where even more limited criteria would be recommended and consistent with the public interest.

(4) Adopt a 3-year wash out period or statute of limitations for convictions.

If the Sheriff's Department decides to implement PEP, we recommend that – in addition to ensuring that notification, transfer and/or interviews only be permitted in accordance with at a minimum AB4 criteria – the Department also adopt a wash-out period for TRUST Act eligible crimes. Adopting a “wash out” period of three years for a criminal conviction would reflect the current “recidivism” definitions and standards set forth by local and state authorities. At a minimum we expect the Sheriff's Department to uphold the five-year wash out period established in AB4.

(5) Provide notice to inmates of I-247Ns and Ds.

If you decide to implement PEP, we urge you to adopt a protocol to serve copies of ICE notification and detainer requests on inmates as soon as possible after receiving any request from ICE.

It is important that inmates are given notice and a copy of any I-247N notification request. This is critical because the presence of a notification request will impact decisions that the individual makes in his or her criminal case; it will impact decisions about pretrial release, including whether to post bail; and it will provide time for an individual and his or her family to obtain immigration counsel prior to any transfer to ICE custody. It is concerning that the current Temporary Operating Procedure affirmatively rejects a practice of providing notice to inmates subject to a notification request.

⁶ The Los Angeles County Sheriff's Department just adopted a PEP implementation policy that follows AB4 in these respects.

⁷ San Bernardino County Sheriff's Department, *Advisory: Revisions to 287(g) Immigration Enforcement Program*, available at <https://nixle.com/alert/5108531/>.

⁸ See, e.g., “Text of Trust Acts,” available at <http://www.catrustact.org/text-of-trust-acts.html>.

At a minimum, your department must provide notice for I-247D detainer forms, as ICE itself requests on the face of the form that your department “serve a copy of [the] form on the subject.” Page two of the form contains important advisals to inmates that are meaningless if never seen by the inmate subject to the detainer. As the I-247N notification requests serve a similar role to a I-247D detainer – to facilitate the transfer of inmates, directly or indirectly, from local law enforcement to federal civil immigration custody – there is a similar necessity in providing notice to inmates subjected to a notification request.

(6) Provide *Miranda*-style advisals to all inmates prior to making them available to ICE for an interview.

If ICE is going to be allowed inside the jails to conduct interviews, it is imperative that inmates be provided with an adval of rights that includes their written consent to be interviewed by ICE, notice that they have a right to an attorney, and notice that anything that they say to an ICE agent may be used against them. We recommend that your department require inmates to read and sign a consent form advising them of their rights prior to permitting ICE to conduct an interview. This practice has been adopted in the jails of Rikers Island, NY, as well as fifteen counties in Colorado. *See* attached forms.

By providing inmates with an adval of rights and ensuring that they knowingly and voluntarily consent to an interview with ICE, your department will help ensure that ICE does not violate inmates’ Fifth Amendment rights when conducting custodial interrogations. *See, e.g., United States v. Mata-Abundiz*, 717 F.2d 1277, 1279 (9th Cir. 1983) (“civil as well as criminal interrogation of in-custody defendants by INS investigators should generally be accompanied by the *Miranda* warnings.”). This is particularly important because by inviting ICE into the jail to conduct interviews on a routine basis there is a high likelihood that ICE may use information obtained in such custodial interviews for the purposes of criminal prosecution. *See United States v. Chen*, 439 F.3d 1037, 1043 (9th Cir. 2006) (holding that in-custody questioning of defendant by INS for civil deportation purposes required *Miranda* warnings because he “was subject to an especially heightened risk of [] prosecution”).

We are available to work with your department to create a consent form and set of advisals that could be distributed to inmates for whom ICE requests an interview, using the existing examples from Rikers Island and Colorado as models.

(7) Create a process for inquiries and disputes about notification or detainer requests, or access to inmates or inmate records.

Finally, we recommend that you adopt a procedure for receiving and addressing inquiries from inmates, criminal defense attorneys, advocates, bail agents, family members, etc., about the presence of an immigration detainer or notification request on an inmate, or the practice of ICE access to inmates or inmate records in the jail. There should be a process for these stakeholders to inquire about the presence of an I-247D or N, as well as a process for receiving and resolving any disputes or problems flowing from the existence of either request, or the practice of ICE’s conduct of interviews or access to records.

We appreciate your willingness to listen to community groups before drafting a final policy around PEP. We hope that you can look into our recommendations and we look forward to hearing what steps your department will take to address these concerns.

We look forward to continued engagement.

Sincerely,

Luis Nolasco, Policy Advocate
Jennie Pasquarella, Staff Attorney
ACLU of Southern California
lnolasco@aclusocal.org
jpasquarella@aclusocal.org

Emi MacLean, Staff Attorney
National Day Laborer Organizing Network

Emilio Amaya
San Bernardino Community Services Inc.

Cc: Jean Rene Basle, County Counsel

Attachments:

Temporary Operating Procedure
Sample Advisals

INTEROFFICE MEMO



DATE September 30, 2015 **PHONE**
FROM Shannon Dicus Deputy Chief
Detention and Corrections Bureau
TO All Personnel
Detention and Corrections Bureau

SUBJECT **TEMPORARY OPERATING PROCEDURE**
PRIORITY ENFORCEMENT PROGRAM (PEP)

The United States Immigration and Customs Enforcement (ICE) agency has recently implemented a new program called Priority Enforcement Program (PEP). This program allows ICE personnel to work with local agencies to identify inmates in our custody that pose a significant threat to public safety. If ICE personnel determine that an individual meets their criteria for deportation, they will submit Request for Notification form to our jail facilities.

The Office of the Sheriff has given specific direction to assist ICE personnel when possible, but under no circumstances violate any of the provisions in the California Trust Act or Federal Case Laws regarding immigration issues.

To help clarify the Departments position regarding PEP, the following temporary operating procedure will be adhered to until a formal bureau policy is developed.

ICE Personnel

ICE personnel with appropriate credentials will be allowed inside of our jail facilities to conduct investigations pursuant to PEP. This includes the review of inmate jackets, JIMS data, release lists and if necessary interviewing inmates. ICE personnel may utilize our internet access ports via their laptop computers to access federal databases. ICE personnel are not "assigned" to any of our facilities, however, they may utilize a vacant desk or work space to facilitate their investigations.

Request for Notification Procedure

ICE personnel may submit a Request for Notification (I-247N) form to any jail facility. The form seeks our assistance by notifying ICE personnel prior to the release of any inmate in our custody. The Department will make every effort to provide ICE personnel with reasonable notice of a pending release of an inmate. Notifications shall be documented on the inmates' jacket. The documentation shall include who made the notification, date, time, etc. The current contact person for all ICE notifications is:

Agent Christopher Hisel

Email: Christopher.R.Hisel@ice.dhs.gov

Phone: 951-235-9083

This information is subject to change. Notification of any changes will be sent to all jail facilities when necessary.

ICE personnel may also submit an Immigration Detainer form (I-247D). This form requests our Department to hold an inmate for a period of 48 hours past their regularly scheduled release date. The Department will not honor this request. We will only notify ICE of a pending release date. Again, at no time will our Department keep an inmate in custody past their regularly scheduled release date.

Release Procedure – PEP Inmates

All inmates will be processed pursuant to existing bureau and facility policy. Inmates will complete the entire release process, which includes being dressed out, signing of paperwork, release of property, etc. Once the inmate has been completely processed, he/she will proceed to the public lobby or area where inmates are typically released from your jail facility. At that time, ICE personnel may take that person into custody. If ICE personnel are not there to arrest or detain the inmate, he/she must be released according to bureau and facility policy.

Notification to Inmates

The Department is not required to notify an inmate that ICE personnel have submitted a Request for Notification form. Therefore, no notification shall be made to an inmate in our custody.

This temporary operating procedure will remain in effect until further notice.

If you have any questions, please contact the Administrative Support Unit.

Thank you for your cooperation.

COUNTY JAIL ICE INTERVIEW RIGHTS FORM

Please be advised that Immigration and Customs Enforcement (ICE) is investigating your immigration status. An agent of ICE has made an official request to interview you _____ in person _____ via telephone. You have the right to accept or decline this interview. This document is provided to you to inform you of your rights and determine if you consent to the ICE interview.

I, _____, am an inmate in the _____
(Print Inmate's Name)

County Jail. An agent of ICE has made a request to interview me in the Jail _____ in person _____ via telephone. I understand that I have the following rights regarding this interview:

I have made my first appearance in court for local charges. _____ yes _____ no
and I was advised of my constitutional rights at this appearance

I understand that I have the right to remain silent and that
I may refuse to talk to an agent of ICE _____ yes _____ no

I understand that I have the right to speak to an attorney
before talking with an agent of ICE _____ yes _____ no

I understand that anything I say in an ICE interview can and will
be used against me in immigration court _____ yes _____ no

By checking the box and signing below you are indicating whether or not you consent to being interviewed by an ICE agent. The _____ County Sheriffs Office will inform ICE of your decision and ICE will be allowed to proceed with the interview if you give your consent.

Having received this information, I choose the following option:

_____ YES, I give my consent and I would like to speak to the ICE agent

_____ NO*, I do not give my consent and I do not want to speak to the ICE agent

(Inmate's Signature)* DATE: _____

(Deputy's Signature) DATE: _____

*If neither answer is marked and/or the inmate does not sign the document, the inmate has **NOT** consented to an ICE interview. Silence will not constitute a waiver of the rights described in this form.

**Immigration and Customs Enforcement
(ICE) Interview Consent Form**

Date: _____
Inmate: _____
Book & Case No.: _____
Tier/Housing Area: _____

An Immigration and Customs Enforcement (ICE) agent would like to interview you to ascertain if you are an alien not lawfully entitled to be or remain in the United States. You have the right to be represented by counsel of your choice at no cost to the government and you do not have to speak with the ICE agent at this time. Any statement you make may be used against you in a subsequent ICE administrative proceeding, and there is no penalty if you refuse. You can also choose to only go to the interview with a lawyer. The government will not pay for your lawyer. Anything you say to the ICE agent at the interview may be used to deport you.

Correction Officer's Signature

Shield and ID Number

For Inmate – Check one:

- ☐ I agree to attend this interview without my lawyer.
- ☐ I want to wait to have my lawyer with me for this interview.
- ☐ I do not want to be interviewed by Immigration and Customs Enforcement (ICE).

Inmate's Signature

ICE Interview Consent Form

Form 144 ICE

Fecha: _____

Recluso: _____

Número de Libro y Caso: _____

Piso/Área de Dormitorio: _____

Yo, _____ Oficial de Inmigración y Aduanas (con siglas en inglés correspondiendo a I.C.E.) quisiera entrevistarle porque se cree que usted es un extranjero quien legalmente no tiene el derecho de estar o permanecer en los Estados Unidos. Tiene el derecho de ser representado por un abogado de su preferencia sin algún costo para el gobierno y no tiene que hablar conmigo en este momento. Cualquier tipo de declaración que haga podrá ser utilizada en su contra en cualquier otro tipo de proceso administrativo.

Firma del oficial de I.C.E.

Título y Número de Identificación

Para Ser Completado Por el Recluso-Seleccione Una:

- ☐ Estoy de acuerdo con asistir a la entrevista sin mi abogado.
- ☐ Quiero esperar a tener a mi abogado presente conmigo durante esta entrevista.
- ☐ No quiero ser entrevistado por inmigración.

Firma del Recluso

Local Policies Excluding ICE from Jails

Within California:

Santa Clara, CA: "Except as otherwise required by this policy or unless ICE agents have a criminal warrant, or County officials have a legitimate law enforcement purpose that is not related to the enforcement of immigration laws, ICE agents shall not be given access to individuals or be allowed to use County facilities for investigative interviews or other purposes . . . " See http://www.ilrc.org/files/documents/santa_clara_ordinance.pdf.

Richmond, CA: "ICE personnel shall not be allowed access to the Richmond Police Department Detention Unit (Temporary Holding Facility) unless they are there to pick up a prisoner on a federal warrant or order signed by a judge." See http://www.ilrc.org/files/documents/immigration_policy_aug_2013.pdf

San Francisco, CA: SFSD staff shall not provide the following information or access to ICE representatives:

- * citizenship/immigration status of any inmate
- * access to inmates in jail;
- * access to SFSD computers and/or databases;
- * SFSD logs;
- * booking and arrest documents;
- * release dates or times;
- * home or work contact information;
- * other non-public jail records or information

See http://www.catract.org/uploads/2/5/4/6/25464410/ice_contact,_signed.pdf

Outside California:

NYC: "Federal immigration authorities shall not be permitted to maintain an office or quarters on land over which the department exercises jurisdiction, for the purpose of investigating possible violations of civil immigration law."

Boulder, CO: Places strict limits on when ICE may interview inmates.
See http://www.ilrc.org/files/documents/boulder_county.pdf

Cook County, IL: "Unless ICE agents have a criminal warrant, or County officials have a legitimate law enforcement purpose that is not related to the enforcement of immigration laws, ICE agents shall not be given access to individuals or allowed to use County facilities for investigative interviews or other purposes, and County personnel shall not expend their time responding to ICE inquiries or communicating with ICE regarding individuals' incarceration status or release dates while on duty." See http://www.ilrc.org/files/documents/07_-_cook_county_ordinance.pdf.

New Orleans: "Absent a criminal warrant or court order transferring custody, no ICE

agent shall be permitted into the secure area of the Intake and Processing Center. Absent a court order, OPSO shall not allow ICE to conduct civil immigration status investigations at OPSO or otherwise interview an inmate before the detainee's first appearance." *See* http://www.ilrc.org/files/documents/15_-_new_orleans_policy.pdf.

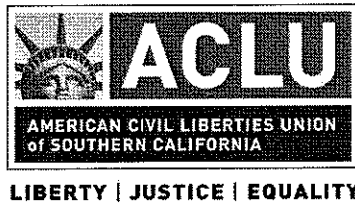
San Miguel, NM: "Unless ICE agents have a criminal warrant or are engaged in a criminal investigation, they shall not be given access to detainees or allowed to use county facilities for detainee interviews or other purposes; and county personnel shall not expend their time responding to ICE inquiries or communicating with ICE regarding detainees' incarceration status or release dates." *See* http://www.ilrc.org/files/documents/18_-_san_miguel_policy.pdf.

Washington, DC: "The District shall not provide to any ICE agent an office, booth, or any facility or equipment for a generalized search of or inquiry about inmates or permit an ICE agent to conduct an individualized interview of an inmate without giving the inmate an opportunity to have counsel present." *See* http://www.ilrc.org/files/documents/21_-_washington_dc_ordinance.pdf.

Appendix D:

Police department transparency and accountability policies and recommendations

1. ACLU letter to Anaheim City Council re: Anaheim Civilian Police Review Board
2. Civilian Review of Police PowerPoint presentation
3. Understanding Community Policing PowerPoint presentation
4. ACLU statement on body cameras in policing
5. ACLU letter to Riverside Chief Sergio Diaz re: body cameras



March 21, 2013

Sent via Personal Service

Anaheim City Council
City Hall 7th Floor
200 S. Anaheim Blvd.
Anaheim, CA 92805

Re: Anaheim Civilian Police Review Board

Dear Honorable Mayor and Esteemed City Council:

On behalf of the ACLU of Southern California ("ACLU-SC"), I write to express our support of a civilian police review board in Anaheim. Such a board, if provided with the resources necessary to be effective, including proper training of board members regarding police practices, will help assure Anaheim's residents that complaints are investigated transparently and vigorously, while at the same time will vindicate officers, when allegations are not sustained, in a system that the public feels they can trust. Equally important, it will provide a valuable bridge between the Anaheim Police Department ("APD" or "Department") and the community, to ensure that each understands the concerns of the other, which can only enhance both officer safety and the safety of the community.

Trust between residents and the police who serve and protect them is a crucial element to effective police work. When trust is lacking, it not only reduces crime reporting, but endangers the lives of officers and hinders the ability of police to investigate crime, peacefully resolve disputes, and keep residents safe.¹ For many in Anaheim, distrust of the APD is undeniable, and recent history has only exacerbated the situation. In response to a Public Records Act request filed by our office, the Office of the Orange County District Attorney ("OCDA") has indicated there have been at least 37 officer-involved shootings in Anaheim over the last ten years. The victims have disproportionately been people of color. Although the OCDA has investigated these 21 lethal and 16 non-fatal officer-involved shootings, no prosecutions have occurred. In contrast, civil lawsuits involving many of those shootings have resulted in the City of Anaheim

¹ See generally Plant, Joel B. and Scott, Michael B., "Effective Policing and Crime Prevention: A Problem-Oriented Guide for Mayors, City Managers, and County Executives." United States Dept. of Justice, Office of Community Oriented Policing Services. August 2009. Available at <http://www.popcenter.org/library/reading/pdfs/MayorsGuide.pdf>.

Chair Stephen Rohde **President** Shari Leinwand

Chairs Emeriti Danny Goldberg Allan K. Jonas Burt Lancaster* Irving Lichtenstein, MD* Jarl Mohn Laurie Ostrow* Stanley K. Sheinbaum

Executive Director Hector O. Villagra **Chief Counsel** Mark D. Rosenbaum **Deputy Executive Director** James Gilliam

Communications Director Jason Howe **Development Director** Sandy Graham-Jones **Orange County Office Director** Belinda Escobosa Helzer

Legal Director & Manheim Family Attorney for First Amendment Rights Peter J. Eliasberg **Deputy Legal Director** Ahilan T. Arulanantham

Director of Policy Advocacy Clarissa Woo **Director of Community Engagement** Elvia Meza **Executive Director Emeritus** Ramona Ripston

*deceased

paying the victims millions of dollars, and ongoing litigation will likely cost millions more. These contrasts only deepen suspicions regarding the underlying incidents and the system of accountability.

Additionally, the widespread unrest that followed some of last year's shootings, including an aggressive – and according to Chief Welter, “entirely inappropriate”² – police response to residents' protests only further eroded the community's confidence in the Department. Residents continue to express concerns in City Council meetings and elsewhere about excessive and unnecessary use of force, intimidation tactics, racial discrimination, personal retribution, and slow response times. Without a transparent system to investigate the community's allegations, in which the progress of investigations is actively communicated to the concerned public, skepticism on both sides has grown and questions remain unresolved. An effective civilian review framework will help the City address these issues.

With systems for civilian review of police in place in at least 117 cities and counties nationwide, including 22 in California alone, the concept is hardly new, and the benefits are well understood.³ As the Office of the City Manager has reported, “[t]here are potential benefits of civilian oversight that may include: increased public confidence; improved public perception of police professionalism; and increased public understanding of the nature of police work and police behavior.”⁴ The U.S. Department of Justice (“DOJ”) agrees, concluding that civilian review may yield benefits not only to the public at-large, but to all the stakeholders involved, including police and local government.⁵

The precise structure of a civilian review board can vary, whether in its form or level of authority. For instance, some boards directly investigate citizen complaints and make findings, while others merely review the findings of internal investigations already conducted by police. In some jurisdictions, a civilian board hears only appeals from police investigative findings, while in others, a board may provide recommendations to improve the police's existing investigative process and structures. Indeed, there are many different types of civilian review, and determining which system would best fit Anaheim is a matter that can and should be debated openly.

² FAULT LINES, “Anaheim: A Tale of Two Cities.” Al-Jazeera English. *Available at* <http://www.aljazeera.com/programmes/faultlines/2012/12/20121211112848544968.html>

³ See The National Association for Civilian Oversight of Law Enforcement. *Available at* <http://nacole.org/resources/police-oversight-jurisdiction-usa> (last checked March 6, 2013).

⁴ Council Agenda Report, “Review Information on Police Oversight Models.” Office of the City Manager, City of Anaheim. January 15, 2013.

⁵ Finn, Peter “Citizen Review of Police: Approaches and Implementation,” Department of Justice. March 2001. *Available at* www.ncjrs.gov/pdffiles1/nij/184430.pdf.



Limitations of the Current Police Oversight Structure

Opponents of civilian review often point out that the Department already has methods in place for internal and external review of police misconduct. But as the International Association of Chiefs of Police has noted, while not a “cure-all, ... (i)f accompanied by a full package of accountability-building strategies... citizen review is one building block of accountability.”⁶

Unfortunately, the current framework neither provides comprehensive oversight on the breadth of the complaints raised by the community nor addresses the threshold problem of lack of community confidence in its police force. Specifically, the existing structure does not provide the transparency or public involvement necessary to allow complainants and many community members to feel confident in the outcome of investigations regarding alleged police misconduct.

For example, while the OCDA may investigate allegations of criminal conduct by police officers for potential prosecution, it does not investigate allegations of misconduct that fall short of criminal behavior, but which may be in violation of existing police policy or which, regardless of their legality, cause harm to Anaheim’s communities. Even with regard to allegations of criminal behavior, the absence of a formal prosecution means only that the OCDA did not believe it could prove criminal behavior beyond a reasonable doubt, not that allegations were unfounded. Furthermore, given the close working relationship between the OCDA and the police, there is public concern whether such an investigation can be truly independent. Indeed, the mere appearance of impropriety in an investigation will always undermine public confidence in its result.

The same problems – the perceived lack of impartiality and absence of public involvement – apply to the APD’s own internal review structure, including its Major Incident Review Team (“MIRT”) and Internal Affairs (“IA”) unit, undermining public confidence in those processes as well. Although resident complaints must be reviewed by IA, any investigation is purely internal with little to no public participation. Furthermore, MIRT investigations only involve incidents of great bodily injury or deadly force, and they can only be initiated by high ranking police officials. A member of the public can not trigger a MIRT investigation automatically through a complaint or review the investigation, and misconduct that does not involve great bodily injury but which is equally offensive – like an unlawful search or an unjustified threat to use force – will not receive MIRT review.

Additionally, although the Department may directly request the Office of Independent Review

⁶ See International Association of Chiefs of Police, “Police Accountability and Citizen Review.” November 2000. Available at <http://www.theiacp.org/PoliceServices/ProfessionalAssistance/Ethics/ReportsResources/PoliceAccountabilityandCitizenReview/tabid/193/Default.aspx>. (Last checked March 19, 2013).



("OIR") to review certain incidents involving lethal force, it is unclear how OIR's investigation or review correlates to MIRT authority to investigate the same. Furthermore, although OIR has conducted specific reviews of certain lethal force cases at the request of the Department, it does not provide ongoing or comprehensive oversight on all claims of misconduct, and it does not allow for public participation nor respond directly to the public's concerns.

Last, Chief Welter should be commended for convening a Community Advisory Board in which members of the Department meet with 22 members of the community to discuss matters of concern. However, the Advisory Board only engages in a dialogue and has not been granted oversight power. Without the ability to conduct investigations into specific complaints or to mandate that such investigations take place, the Advisory Board should not be confused with a civilian oversight board, though it can certainly complement the work that an oversight board may do. Further, because the members of the Advisory Board were selected by the Chief of Police, some community members may feel that their concerns are not represented on the Board

What Civilian Oversight Can Add to Community-Police Relations

Because the current police oversight structure does not address concerns that many community members have with the Department regarding a lack of transparency and accountability, a civilian review board will compliment, not hinder, existing review processes. Civilian oversight can provide independent review of non-lethal or non-criminal misconduct that may not currently be subject to review, allow citizen participation in policy recommendations, neutrally audit investigations where impropriety is alleged, identify patterns of abuse, and permit the public to directly trigger a transparent review mechanism. In other words, a civilian police review board can fill the gaps in the current system and restore the community's confidence in its police department, resulting in a safer, more united Anaheim.

With civilian review, police can respond directly to individuals who vocally criticize the police but who, as has been alleged, "simply do not have all the facts in a case," by providing an opportunity to share those facts.⁷ It is precisely because critics of the police have limited access to the facts, having to rely instead on limited information and their own speculation, that instituting civilian review is so important.

Furthermore, a review board will provide a neutral venue where members of the public can feel safe filing complaints. According to some, police misconduct is not truly a concern in Anaheim because there have been only a handful of civilian complaints about police in the last year. However, because complaints can only trigger an internal, police investigation, as opposed to

⁷ See Anaheim Police Association, "Civilian Review Board Q&A." Available at <http://anaheimpa.com/news/entry/anaheim-police-association-s-civilian-review-board-q-a-1>. (Last checked March 6, 2013).



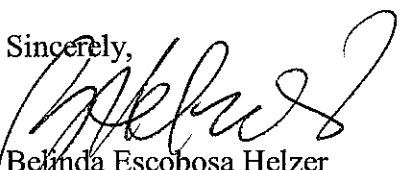
review from a neutral body, many forego the complaint process altogether. In addition, because complaints are directly routed to the police, residents may be more reluctant to make a complaint out of fear of retribution. With proper outreach, a civilian review board could address any problem of under-reporting of police misconduct in Anaheim.

Rather than working in opposition to each other, civilian review board members and police should work closely together in a manner that fosters mutual respect and understanding between the Department and the public. Only with proper training from law enforcement will civilian review board members be able to assess the propriety of particular police conduct. More importantly, such training will allow a civilian review board to help educate the residents regarding Department concerns and credibly communicate why particular conduct may or may not have been appropriate under the circumstances.

Finally, in addition to direct review, civilian review also has the potential to collect data and issue reports that would help the public understand the Department's work, including, for instance, whether certain geographic areas experience the majority of officer-involved shootings, whether long term trends in shootings are consistent with recent history, the frequency with which officers are required to use force in their daily activities, or whether certain officers are responsible for the most citizen complaints in what may otherwise be an exceptional Department. A review board can also audit existing internal police investigations to monitor neutrality in the process and over time.

Together, police, residents, and local government share responsibility for keeping our communities safe. Community confidence in the police department is essential in that endeavor. Unfortunately, recent history has eroded an already strained relationship between the APD and parts of the community, while the existing framework for police accountability has only further compounded feelings of distrust, largely because it operates with minimal transparency or civilian involvement. This does a disservice to residents and police officers alike. Residents have a critical role in holding police accountable, and police should not be hindered in their work by operating under a cloud of suspicion that may be unwarranted. The transparent and impartial review that a properly trained and funded civilian review board can provide is precisely what Anaheim needs to credibly address these problems. It will provide a building block for restoring community trust and will help create a safer, more unified Anaheim, which is what we are all striving for.

Sincerely,


Belinda Escobosa Helzer
Director, Orange County Branch Office

CC: City Manager
Chief of Police



LIBERTY | JUSTICE | EQUALITY

CIVILIAN REVIEW OF POLICE

Approaches and Considerations

1. WHAT IS CIVILIAN REVIEW?

2. WHY CIVILIAN REVIEW?

Limitations of Existing Oversight Models

District Attorney

- Only investigates whether a crime has been committed; not misconduct that falls short of a crime;
- Failure to prosecute means DA believes can't prove crime beyond reasonable doubt; NOT that allegations were unfounded;
- Perceived close relationship with police undermines public confidence in result

Internal Affairs

- Investigation behind closed doors, no public participation
- Whether true or not, perception of police taking care of their own undermines public confidence
- Reporting abuse to the abusers
- In some departments, investigation initiated from within, not by public

Outside Body

(e.g. OIR)

- Isolated review of specific incidents
- Review not initiated by public
- Lack of ongoing/consistent oversight body does not deter misconduct
- Not responsive to public questions/concerns/participation
- Investigation behind closed doors, with little to no public reporting as to progress

POTENTIAL BENEFITS OF CIVILIAN OVERSIGHT

FOR COMMUNITY

- Provides "validation" for complainants
- Safe, neutral space to raise concerns re police
- Increases community involvement
- Discourages police misconduct
- Increases trust in outcomes of investigations

FOR POLICE

- Improves relationship with community through increased trust, which increases officer safety
- Suspect officers publicly vindicated if exonerated
- Increases public understanding of police work
- Leads to valuable policy /procedure recommendations

FOR LOCAL GOV'T

- Provides venue to demonstrate shared concern with constituents re police misconduct
- May reduce the number of civil lawsuits vs city
- Cost savings: \$ saved from defending lawsuits, hiring investigators or contracting with outside investigative bodies for claims

LIMITATIONS OF CIVILIAN OVERSIGHT

- **Civilian Oversight Will Not Cure Police Misconduct Alone** - Must be part of larger structure of internal and external accountability
 - i.e: criminal prosecution, civil litigation, legislative oversight, supervisor review process are all necessary elements
- **Limited authority:** body usually does not impose discipline or dictate to police, but offers recommendations to Dept or City/County
- **Effectiveness depends enormously on individuals involved:** so the process for appointment, community participation and cooperation, are critical
- **Limited reach:** Effective accountability for front-line officers, not as much for supervisors
- **Can't make everyone happy:** some complainants and others will never be satisfied with process
- *If done poorly, with poor communications, can exacerbate tension among police, citizens, and organizations/agencies, rather than alleviate it*

Civilian Oversight Models

Citizen Investigation Model

Citizens conduct investigations and recommend findings

Citizen Review Model

Citizens review or audit investigations by police and make recommendations

Citizen Appeal Model

Citizens hear appeals from police investigations/ findings

STAFFING DECISIONS

Typically need:

- **Board members**
 - Specific responsibilities and scope of Board's work must be laid out before recruiting
 - Considerations: Paid or volunteer? How recruited? How appointed? How many? How to train? Minimum Qualifications?
- **Professional investigators**
 - Civilians need someone who can help them understand police culture and investigate police files
 - Considerations: How many? Learn on the job? Law enforcement background? Usually paid.
- **Optional: Executive director/auditor**
 - Provides experience in examining public safety practices, maintains institutional memory, assists with training

Ensuring Effectiveness

- **Mandatory Police Cooperation:** Either through subpoena power or legal mandate requiring access to witnesses, documents, and info
- **Adequate Funding/Resources:** Should not be a lower budget priority than Dept Internal Affairs.
- **Investigatory Power:** The authority to independently initiate investigations/audits and issue findings
- **Independence and Transparency:** Recommendations and findings made public without department or city veto
 - Body should have offices away from police HQ

Additional features and tradeoffs to consider

- **Size/Make-up of Board:** Should reflect community diversity
 - But too many people can mean more debate, longer review, less uniformity in recommendations
 - Too few may not represent entire community and may overburden members, limiting the depth of investigation
- **Volunteers vs. Paid Staff?**
 - Paid may increase quality and attention of members. May also complicate members' motivation/loyalty
- **Public vs Private Hearings?**
 - Public hearings increase public confidence in process, Board credibility
 - Private testimony with public findings may lead to greater department buy-in, but community trust in Board must be high or trust can erode
 - These considerations may be different if the hearing is on a particular complaint vs a debate re policy recommendations

OTHER CONSIDERATIONS RE EFFECTIVENESS

- **Scope of Work**
 - What will be investigated/reviewed?
 - All complaints? Minimum Level of Seriousness? Random audit?
 - Policies? Practices? Policing trends?
 - Data Collection, Analysis and Reporting?
 - If data is collected, public reporting of data and any findings/recommendations is important
- **Publicizing the work**
 - Where will data be made available, what sort of outreach will be made to communities?

Important to PLAN and STRATEGIZE before TAKING ACTION or MAKING RECOMMENDATIONS

What Features are Best for Your
Community?

RESPONSES TO POLICE CONCERNS

Concern

- Citizens should not interfere in police work (IA, Chief review, etc. already do a good job)

Response

- Oversight bodies usually only provides recommendations
- Even if disciplinary action is appropriate, the transparency of civilian oversight reassures skeptical citizens of the legitimacy of the process

RESPONSES TO POLICE CONCERNS

Concern

- Citizens do not understand police work

Response

- Board will improve public understanding : Officers and written materials are usually made available to explain department procedures, and training is recommended for board members
- Hearing the perspective of citizens re police behavior is the precise purpose
- Other police policies can improve public understanding (e.g. community policing programs)

RESPONSES TO POLICE CONCERNS

Concern

- Unfair Process, *e.g.*:
 - oversight staff may have a bias against police
 - Indecisive findings remain in officers' file
 - expanding investigation beyond complaint at issue
 - complainants use the system in prep for a lawsuit

Response

- Oversight staff and police must work together, meet regularly in order to iron out conflicts/misconceptions
- Indecisive findings do not help complainant or police, and therefore should be discouraged
- Adding charges may be appropriate in a given case, regardless of whether in a citizen review or internal police review
- Review findings/exonerations help in defense of unfounded civil suits



Understanding Community Policing

Community Policing

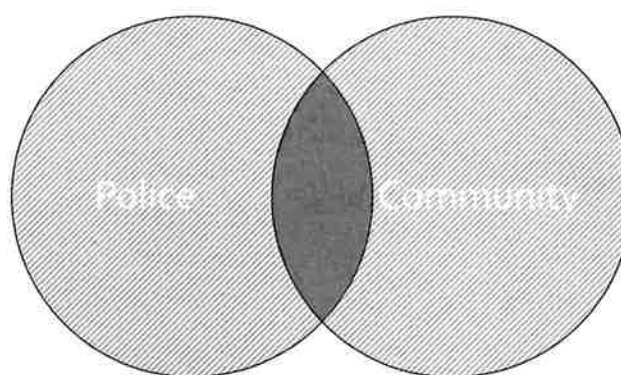
- What is it?
- What do we need to achieve it in our community?



What is Community Policing?

Community Policing Philosophy

- Police are not outsiders simply enforcing the law
- Police work **together** with the community to:
 - Identify problems;
 - Identify root causes of crime and disorder;
 - Collaborate searching for and implementing long-term solutions to public safety issues.



The Essence of Community Policing

"We in policing have taken a very strong, positive approach to helping people integrate into our community. Our obligation under community policing is to make sure people's rights are protected, that they're not victimized by crime, and that they become viable members of our communities. That is the essence of community policing."

Police Commissioner Frank Straub, White Plains, New York.

What's the difference between
Community Policing and Traditional Policing?

Community Policing



Traditional Policing



What's the difference between Community Policing and Traditional Policing?

Community Policing

- PROACTIVE through building relationships and problem solving with the community.
- Crime prevention is achieved through positive interactions between police and the community.

Traditional Policing

- REACTIVE to alleged crimes and infractions through responding to calls for service.
- Rely on punishment through criminal laws to gain control.
- Crime prevention through police presence usually leads to negative relationships between the police and the community.

What's the difference between Community Policing and Traditional Policing?

Community Policing

- Expands the role of police beyond crime fighting to be partners with the community in promoting improved living conditions for residents.

Traditional Policing

- Police success is measured by how fast police officers respond to calls for service
- Emphasis is on identifying, arresting, and punishing individuals when they believe a crime has been committed

Why is Community Policing Important?

Current Trend . . . Militarization of Police



Is Community Policing an Accepted and Effective Method of Policing?

Answer: **YES**

- Community Policing is well-known
- Accepted as being an effective method for decreasing crime
- Positively increases community-police relations

Do Police Support Community Policing?

Answer: **YES**

- U.S. Dept. of Justice encourages police departments to engage in community policing by providing additional funding to police departments that promote community policing.



COPS

Community Oriented Policing Services
U.S. Department of Justice

What do we need to achieve it in our community?

What is Needed for Effective Community Policing?

- Positive Community-Police Relations
- Joint Problem Solving
- Police Department Transformation

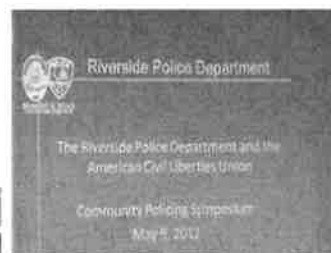
Practices that Increase Community-Police Relations

- Long term assignments of officers to specific neighborhoods or areas so that police officers can build relationships with people living and working in that area
- Foot and bike patrols
- Mini-stations in communities



Practices that Increase Community-Police Relations

- Community meetings
- Community police academies



Practices that Increase Community-Police Relations

- Police athletic leagues
- Educational programs in schools
- Community volunteer programs

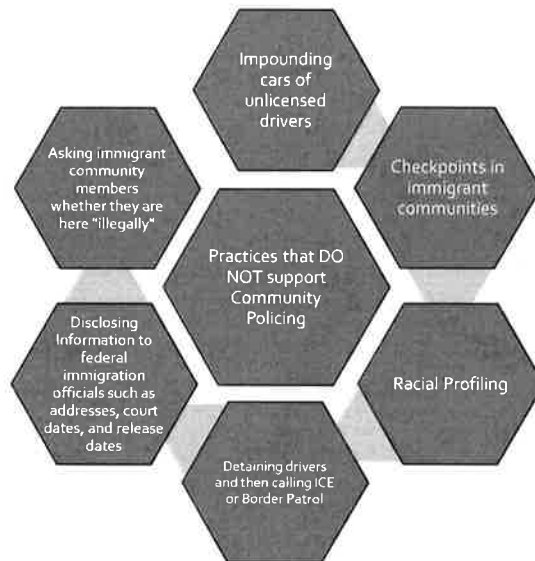


Questions to Ask

Do residents have trust in police?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Some, but needs improvement
Do residents understand their police department's policies and practices regarding policing?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Some, but needs improvement
Are residents involved or do they stay involved with their police department?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Some, but needs improvement
Is the police department moving beyond smaller specific practices to truly engage the community as partners in safety efforts?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Some, but needs improvement
Is the police department successfully collaborating with community-based organizations, businesses and other public and private agencies to address issues of crime, disorder, and safety?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Some, but needs improvement

Joint Problem Solving

Practices that fracture trust between police and the immigrant community:



Amends to the Fractured Relationship amongst the Police and the Immigrant Community

- AB 4 (Commonly referred to as the TRUST Act) took into effect on January 1st 2014. The TRUST Act prohibits the prolonged detention of immigrants by Police & Sheriffs for the purposes of Immigration (i.e. Holding someone on an "ICE Hold" for an extra 48 hours so that ICE can come pick them up & begin that person's deportation) .
- The TRUST Act stemmed from the realization that the relationship between the Immigrant community & the Police was fractured. Immigrants would not call the police to report crimes or if they were victims of crimes solely out of fear that Police would collaborate with Immigration.
- While not outlined in the law, the TRUST Act set forth a symbolic victory that lays out the dangers when Local Law Enforcement is entangled with Immigration Enforcement.

Questions to Ask

Is the police department practicing community policing techniques to help officers move beyond simply arresting residents?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Some, but needs improvement
Is the police department developing strategies to solve problems together with residents, community-based organizations, businesses, and other public and private agencies in the community?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Some, but needs improvement
Does the police department support problem solving internally through training and evaluating officer performance?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Some, but needs improvement
Is the police department engaging in problem solving?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Some, but needs improvement

Police Department Transformation Community Policing Principles



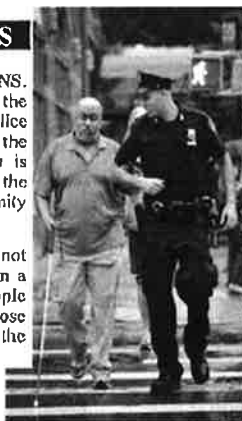
Police Department Transformation

- Community Policing Policy (portion of LAPD Manual)

COMMUNITY RELATIONS

310. GENERAL PROVISIONS. Community relations is based upon the principle that in a democratic society the police are an integral and indivisible element of the public they serve. Community relations is manifested by positive interaction between the people and the police and represents their unity and common purpose.

A system of law and its enforcement is not superimposed upon an unwilling public in a free society; the law is created by the people themselves to control the behavior of those who would seek to interfere with the community welfare and existence.



While the primary responsibility for the enforcement of the law lies with the people, the complexities of modern society and the inability of the people to personally cope with crime has required that they create the police service to assist in maintaining social order. The police represent only a portion of the total resources expended by the public to this end; however, this effort, frequently being restrictive of individual freedom, brings the police into contact with members of the public under circumstances which have a far-reaching impact upon the lives of the affected individuals. A citizen's encounter with the police can be a very frightening and emotionally painful experience, and under these circumstances, the risk of a misunderstanding is very great. The minimization of this risk is a challenge intrinsic to each public contact by the

Department.

The Department must strive for the establishment of a climate where an officer may perform his or her duties with the acceptance, understanding, and approval of the public. Additionally, the willing and practiced participation of the people in enforcing the law is essential for the preservation of freedom.

Police Department Transformation

- Community Policing Policy (portion of LAPD Manual)



320. INDIVIDUAL DIGNITY. A recognition of individual dignity is vital in a free system of law. Just as all persons are subject to the law, all persons have a right to dignified treatment under the law, and the protection of this right is a duty which is as binding on the Department as any other.

An officer must treat a person with as much respect as that person will allow, and the officer must be constantly mindful that the people with whom he/she is dealing are individuals with human emotions and needs. Such conduct is not a duty imposed in addition to an officer's primary responsibilities, it is inherent in them.

Police Department Transformation

- Community Policing Policy (portion of LAPD Manual)

370. INTERPERSONAL COMMUNICATION. To promote understanding and cooperation there must be interpersonal communication between members of the community and officers at all levels of the Department. Each employee must be aware of the law enforcement needs of the community and his or her particular assigned area of responsibility. Guided by policy, an officer must tailor his or her performance to attain the objectives of the Department and to solve the specific crime problems in the area served. The Department must provide for programs to encourage productive dialogue with the public at all levels and to ensure that the unity of the police and the people is preserved.



Police Department Transformation

- Community Policing Policy (portion of LAPD Manual)



380. TRAINING IN HUMAN AND COMMUNITY RELATIONS. The selection process for police officers is designed to choose the most qualified and to eliminate those who are physically, emotionally, mentally, or socially unfit. Those selected, however, are representative of the community at large and as such are subject to having the same prejudices and biases found in much of society. Exposure to crime and its aftermath can tend to harden and render insensitive an officer whose sympathetic understanding is needed to properly perform his/her duties. The Department must provide initial and continuing training in human and community relations to help officers avoid this hardening of attitude and to imbue in each officer an understanding of his/her total role in the community.

Police Department Transformation



330. ROLE OF THE INDIVIDUAL OFFICER. Community relations is manifested in its most common form in the numerous daily encounters between individual officers and citizens. It is at this level that reality is given to the unity of the people and the police and where the greatest burden for strengthening community relations is laid.

deployment and methods of enforcement; however, enforcement policies should be formulated on a Citywide basis, and applied uniformly in all areas.



Implicit in uniform enforcement of law is the element of overhandedness in its application. The amount of force used or the method employed to secure compliance with the law or to make arrests is governed by the particular situation. Similar circumstances require similar treatment in all areas of the City and for all groups and individuals.

To ensure equal treatment in similar circumstances, an officer must be alert to situations where, because of a language barrier or for some other reason, he or she may be called upon to display additional patience and understanding in dealing with what might otherwise appear to be a lack of response.



Police Department Transformation

- Community Policing Procedures (portion of LAPD Manual)

390. **UNDOCUMENTED ALIENS.** Undocumented alien status in itself is not a matter for police action. It is, therefore, incumbent upon all employees of this Department to make a personal commitment to equal enforcement of the law and service to the public regardless of alien status. In addition, the Department will provide special assistance to persons, groups, communities and businesses who, by the nature of the crimes being committed upon them, require

individualized services. Since undocumented aliens, because of their status, are often more vulnerable to victimization, crime prevention assistance will be offered to assist them in safeguarding their property and to lessen their potential to be crime victims.

Police service will be readily available to all persons, including the undocumented alien, to ensure a safe and tranquil environment. Participation and involvement of the undocumented alien community in police activities will increase the Department's ability to protect and to serve the entire community.



Police Department Transformation

- Community Policing Procedures



345. **POLICY PROHIBITING RACIAL PROFILING.** The Department shall continue to prohibit discriminatory conduct on the basis of race, color, ethnicity, national origin, gender, sexual orientation, or disability in the conduct of law-enforcement activities. Police-initiated stops or detentions, and activities following stops or detentions, shall be unbiased and based on legitimate, articulable facts, consistent with the standards of reasonable suspicion or probable cause as required by federal and state law.

Department personnel may not use race, color, ethnicity, or national origin (to any extent or degree) in conducting stops or detentions, or activities following stops or detentions, except when engaging in the investigation of appropriate suspect-specific activity to identify a particular person or group. Department personnel seeking one or more specific persons who have been identified or described in part by their race, color, ethnicity, or national origin, may rely in part on race, color, ethnicity, or national origin only in combination with other appropriate identifying factors and may not give race, color, ethnicity or national origin undue weight.

Failure to comply with this policy is a violation of an individual's constitutional rights. It is also counterproductive to professional law enforcement, amounts to racial profiling, and is considered to be an act of serious misconduct. Any employee who becomes aware of racial profiling or any other violation of this policy shall report it in accordance with established procedure. The Commanding Officer, Internal Affairs Group, shall ensure that all complaint allegations involving racial profiling are categorized under the appropriate category contained in the Department's Penalty Guide.

Police Department Transformation

- Community Policing Procedures (portion of LAPD Manual)

350. RESPONSIVENESS TO THE COMMUNITY. The Department must be responsive to the needs and problems of the community. While the Department's task is governed by the law, the policies formulated to guide the enforcement of the law must include consideration of the public will. This

scene to make such notifications; however, when there is an event of major proportions, the Public Information Officer will assume responsibility for the release of information.



Questions to Ask

Is the police department modifying existing policies to support community policing efforts?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Some, but needs improvement
Is the police department training its officers on how to effectively engage in community policing?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Some, but needs improvement
Is the police department recruiting police officers that live in the community they serve?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Some, but needs improvement
Is the police department seeking grants to support its community policing efforts?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Some, but needs improvement



BODY CAMERAS IN POLICING

In the wake of months of concerns about policing in America, many police departments and government officials are calling for the adoption of body cameras. As of January 2015, at least 72 police departments in the United States have adopted body cameras or established pilot programs for their use. President Obama has announced federal funding to help purchase 50,000 body cameras for police.

Do body cameras work?

The evidence on body cameras is limited, but promising. One widely cited study of body cameras in Rialto, California, showed dramatic results — officers who wore them used force half as often as those who did not, and were nearly 90% less likely to receive citizen complaints. But success in one small, suburban department (where the police chief, one of the study's authors, clearly supported body cameras) does not assure similar results everywhere. The small handful of other studies do not show such clear results, although few police policies have been proven in controlled studies.

Some activists have expressed concern that body cameras won't help hold police accountable, citing high-profile incidents like the Eric Garner case, in which a grand jury declined to indict an officer despite graphic footage of the incident. By providing better evidence of what actually happened, video will hopefully help factfinders hold officers accountable for misconduct that would be harder to prove using witness accounts alone. But even if the video of Eric Garner's death did not lead to the indictment of the officer involved, its powerful images helped the public question whether systems to hold officers accountable might be broken, and — like that of the Rodney King video thirty years before — spurred a national outcry and calls for change.

Does the ACLU support body cameras?

The ACLU of California supports police body cameras if they are used according to policies that assure accountability and adequately protect privacy and allow transparency. The ACLU of California is cautiously optimistic that, used properly, body-worn video cameras can help deter police misconduct and uses of force, provide evidence to hold officers accountable when misconduct does occur and to exonerate wrongly accused officers, and help the public understand how police operate.

But body cameras are only tools — whether they are helpful or harmful depends on how they are used. Strong policies are crucial to ensure they further the goals of improved transparency and accountability, better policing, and greater trust in law enforcement.

However, body cameras aren't a panacea. Video does not always capture the full story, and having video will not resolve every question. Many issues in policing that need addressing — from racial profiling and implicit bias, training on interactions with people with mental illness, limitations on surveillance, the availability of data on police actions and uses of force, transparency in officer discipline, and strong oversight and accountability mechanisms — require looking beyond individual incidents to patterns and systems. Body cameras may help police accountability, but they're only a small part of the reforms we need.

Key Points for Body Camera Policies

For body cameras to promote trust between police and the community, police must use them in a way that carefully balances interests in police accountability, government transparency and privacy.

Rules to Promote Accountability

Clear Rules When to Record, with Minimal Officer Discretion —Body cameras don't advance accountability if police can turn them off when they don't want to be recorded. Officers should record all interactions with the public, and definitely all investigatory interactions (including consensual encounters). Very limited exceptions for sensitive situations (such as in instances of sexual assault or recording inside homes) should be permitted with clear, on-camera permission to stop recording.

Enforcing Compliance —Departments must enforce recording policies by auditing officers' compliance and imposing meaningful consequences for failure to activate cameras or tampering with equipment.

Randomized Audits —Body camera footage should be subject to regular, randomized review to identify problems with training or officer conduct before they result in complaints or incidents. But supervisors shouldn't target particular officers without complaints of misconduct for "fishing expeditions."

Officer Review of Footage —Officers involved in a critical incident like a shooting or facing charges of misconduct should not be permitted to view footage of the incident before making a statement or writing an initial report. Police do not show video evidence to other subjects or witnesses before taking their statements. Officers should watch the video after their initial statement and have the chance to offer more information and context. Officers may not remember a stressful incident perfectly, so omissions or inconsistencies in their initial account shouldn't be grounds for discipline without evidence they intended to mislead. This would provide the fullest picture of what happened without tainting officers' initial recollection or creating the perception that body cameras are being used to cover up misconduct, not hold officers accountable.

Video Integrity —The public can only trust video evidence if there is no doubt officers cannot alter or delete the video they record. The devices must allow no way for officers to edit or delete video during the shift or the upload process, or after being uploaded to a secure server, until the retention period has elapsed. Even after routine deletion, records of access and deletion should be retained.

Rules to Protect Privacy, Create Transparency and Allow Public Access

Notice to People Recorded —Recording someone secretly is more invasive than doing so openly. Whenever possible, officers should notify people that they are being recorded, either by telling them or by having cameras clearly marked with a notice that the encounter may be recorded.

No Use for Surveillance —Body cameras shouldn't be used for surveillance of the public, especially gathering of intelligence information based on First Amendment protected speech, associations, or religion. Departments should bar review of video unless there's specific reason to believe that it contains evidence of a crime or misconduct, or as part of a randomized audit, and should prohibit analysis of video with other surveillance tools, such as facial recognition technology.

Public Release —Setting the right balance between privacy and transparency in public access is tricky, but some situations are clear. Videos of public importance (such as those of a shooting or other serious use of force, or other potential misconduct) should to be made public. Those with highly private footage, such as inside a home, should remain private. Where possible, agencies should protect privacy by anonymizing civilians' features and voices through blurring and audio alteration, if doing so can still further transparency.

Civilian Access —Giving people video of their own encounters with law enforcement does not raise privacy concerns. Civilians recorded by body cameras should unquestionably have the right to obtain copies of those recordings for however long the government maintains them.

Transparent Process —As with any surveillance technology, department policies governing body cameras and the resulting video should be developed through an open process with public input. The process of developing and finalizing policies must be complete before the devices are deployed.



November 12, 2015

Chief Sergio Diaz
Riverside Police Department
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Sent via e-mail and U.S. mail

Dear Chief Diaz,

Thank you for visiting our office this summer to meet our Inland Empire staff. We are pleased that our meeting resulted in a productive discussion of the issues that are important to both the Riverside Police Department (“RPD”) and the ACLU of Southern California (“ACLU SoCal”). During our discussion of body-worn camera programs, we discussed the issue of whether or not to permit officers to review body-worn camera footage of critical incidents before first making a statement to department investigators. We write on behalf of ACLU SoCal to state our position on such a policy.¹

It is ACLU SoCal’s position that law enforcement officers involved in critical incidents or facing charges of misconduct should *not* be allowed to view body-worn camera footage of the incident in question before making a statement or writing an initial report. Letting officers preview video of an incident before giving a statement enables the contamination of important evidence and undermines the legitimacy of internal investigations, thus compromising the public’s trust in the law enforcement agency as a whole.

Other law enforcement agencies agree with us. The Oakland Police Department, which was one of the first police agencies to adopt body cameras in 2010, has a policy prohibiting officers from reviewing video prior to making a statement in investigations arising from serious uses of force.² When the Los Angeles Sheriff’s Department recently installed video cameras in

¹ We understand that RPD is currently testing body-worn cameras through a pilot program. While this letter only comments on a body-worn camera policy that arose during our discussion, we ask that RPD provide us with information about draft policies under consideration, so that we may provide feedback prior to the implementation of a Department-wide body-worn camera program. We also encourage RPD to solicit and obtain the input of community groups and members of the public regarding its policies.

² Departmental General Order I-15.1, “Portable Video Management System,” Oakland Police Department, 4 (effective Mar. 5, 2014), available at https://www.aclu.org/sites/default/files/assets/mar_14_pdrd_policy.pdf.

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*deceased

its jails, it adopted, after careful consideration, a policy that requires deputies in the jails to file reports on incidents before viewing video, for many of the reasons we articulate below.³

Showing Video To An Officer Under Investigation Leads To Contamination Of Crucial Evidence.

The main argument given by those who support showing officers video is simply that: “We want officers to give the most accurate possible statement, so why not let them view the video first?” For several reasons, letting officers view body-worn camera footage of critical incidents before making an initial statement would hurt accuracy and truth-seeking far more than it could help.

- *Showing video to the subject of an investigation can affect memory of the event.*

Even for officers who are trying to tell the truth (as we hope most do), showing them video can easily influence their memory of events and impede the search for truth. A camera worn on a police officer’s body may capture some things an officer missed and miss things an officer did see. Memory is highly malleable, and an officer’s initial recollections of what took place are likely to be altered by viewing the video, so that details that do not appear on video are forgotten, and things captured by the video are recalled as if experienced firsthand. As the Los Angeles County Office of Independent Review found in working on Sheriff’s Department policy, there is “ample evidence that seeing additional information than what was experienced (such as seeing the action from a different angle) can alter the memory of an event.”⁴

Body camera footage provides one important piece of evidence related to whether an officer acted reasonably. But the officer’s memory of what took place is also important evidence. Courts evaluate the legality of an officer’s use of force based on what he or she knew at the time, not on information gleaned from pouring over video evidence later.⁵ Moreover, if officers set down their memories before they are contaminated by viewing video, they may capture important elements of the truth that the video has missed. An officer’s firsthand, uncontaminated account could actually lead to a closer interrogation and reveal ways that the video may be misleading.

Thus, the policy we propose is necessary to preserve crucial evidence—officers’ initial recollections—in a form untainted by external influence.

- *Showing video to the subject of an investigation enables the distortion of truth.*

Video evidence can be enormously helpful, but it does not capture everything from every angle. Consequently, a preview of body camera footage can present officers with opportunities

³ Los Angeles County Office of Independent Review, *Eleventh Annual Report*, 36 (Dec. 2013), available at http://shq.lasdnews.net/shq/LASD_Oversight/OIR-Eleventh-Annual-Report.pdf.

⁴ *Id.* at 35.

⁵ *Graham v. Connor*, 490 U.S. 386, 396 (1989).

to omit certain facts or “bend” the truth so it reflects more favorably upon them. If officers watching video evidence discover that certain elements casting them in a poor light are not captured, or key moments are not in frame, they may feel at liberty to shade their accounts of events accordingly. A policy like one we propose would remove such invitations to distort the truth. If officers are not sure what was and was not captured by body-worn cameras, they will be more disposed to tell “the whole truth and nothing but the truth,” as they recall it, when initially describing incidents.

- *Showing the subject of an investigation video before taking a statement is a poor investigative practice.*

Allowing the subject of an investigation to review potentially incriminating evidence before taking his or her statement is hardly a solid investigative practice. Police do not extend the opportunity to preview video evidence to suspects in other investigations or to other witnesses of police uses of force.⁶ Restricting officer access to video simply applies the same standards that police officers use in other law enforcement investigations to investigations of officers.

Allowing Officers Under Investigation To View Video Before Making A Statement Undercuts The Legitimacy Of Investigations.

Because letting officers preview videos of an incident before giving a statement can enable them to lie more effectively, even providing the opportunity undermines the credibility of officer statements and department investigations – whether the officers actually lie or not. Some members of the public may begin to perceive police body cameras as tools for police cover-up, rather than tools for accountability.

Further, because police do not typically show video evidence to the subjects of uses of force or to civilian witnesses, the ability to preview body camera footage would appear a special privilege only given to officers. A one-sided policy entitling officers to review video evidence before making statements during an investigation would create the appearance of bias in favor of officers, and would thus taint the public’s view of the investigation’s integrity. In fact, adopting a policy that prohibits the target of an investigation from reviewing potentially incriminating evidence before writing a report or making a statement may actually enhance the perceived integrity and legitimacy of a department’s internal systems of accountability, and aid officers in their overarching mission to enforce the law. As recently stated in the Final Report of the President’s Task Force on 21st Century Policing,

⁶ LAPD Commander Andy Smith explained why his agency withholds autopsies in police shootings from the public for a period of time: “‘We don’t want the witnesses’ testimony to be tainted,’ Smith said. Detectives want to obtain ‘clean interviews’ from people, rather than a repetition of what they may have seen in media reports about [the subject’s] death, he added. ‘They could use information from the autopsy to give credibility to their story.’” Frank Stoltze, “LAPD places ‘security hold’ on autopsy report,” KPCC (Aug. 18, 2014), *available at* <http://www.scpr.org/news/2014/08/18/46063/ezell-ford-lapd-places-security-hold-on-autopsy-fo/>.

Decades of research and practice support the premise that people are more likely to obey the law when they believe that those who are enforcing it have authority that is perceived as legitimate by those subject to the authority. The public confers legitimacy only on those whom they believe are acting in procedurally just ways.⁷

ACLU SoCal's Proposed Policy Would Not Prevent Departments From Addressing Officers' Legitimate Concerns

Those who support showing officer video agree that in stressful situations like shootings, even trained observers may have trouble recalling events accurately.⁸ They argue that since video is often the most accurate record of what occurred, letting officers review footage will help lead to the truth of the incident by helping officers to remember an incident more clearly.

But these arguments do not justify giving officers access to body-worn camera footage before they have given an initial statement. Of course officers should be allowed to watch the video *after* giving an initial statement, so that they may offer additional information if the video jogs their memory of something they left out or misremembered, or provide context if it shows something they missed entirely. That would help provide the fullest picture of what happened, including the deputy's commentary on the video evidence, without tainting the deputy's initial recollection or providing the deputy with a roadmap to distort the truth without getting caught.

Officers may have an additional concern: because memories are fallible, particularly in stressful events, officers' initial accounts almost certainly are not going to match the videos exactly. Officers do not want to suffer negative consequences because they misremembered some details such as which hand a subject used to reach for a door or wallet, or even important facts like how many shots they fired. These concerns have some validity. But every other witness and subject of an investigation has to deal with such realities; police should not get special treatment. The right answer is to confront misperceptions about the accuracy of eyewitness memory, not to fabricate a false level of accuracy by letting officers tailor their accounts to video. Finally, departments may address officers' concerns about employment consequences by adopting policies that recognize that officers involved in stressful incidents like shootings should not be disciplined automatically for giving testimony that contradicts body-worn camera footage, absent evidence that they intentionally misstated the facts.

⁷Final Report of the President's Task Force on 21st Century Policing (May 2015), *available at* http://www.cops.usdoj.gov/pdf/taskforce/TaskForce_FinalReport.pdf, at pp. 9-10.

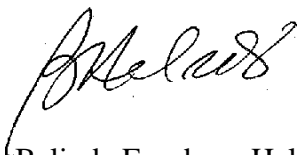
⁸ See, e.g., Police Executive Research Forum, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned*, 29–30, 45–47, 62 (2014), *available at* http://www.policeforum.org/assets/docs/Free_Online_Documents/Technology/implementing%20a%20body-worn%20camera%20program.pdf.

By providing video evidence of police officers' interactions with the public, body-worn video has the potential to deter misconduct, to hold officers accountable when misconduct does occur, and to quickly exonerate officers who are wrongly accused. However, body cameras are only a tool. Depending on the policies that govern their use, they can be effective or ineffective — and can even undercut the very values they are meant to promote.

For the reasons discussed, we believe a policy preventing officers from reviewing body-worn camera footage of critical incidents before first making a statement to department investigators is central to ensuring that a body camera program promotes accountability and truth-finding, and retains public trust. We are hopeful that if RPD decides to consider and adopt body-worn video, the Department will be careful to enact strong, comprehensive policies necessary to achieve an effective implementation of a body camera program.

We are happy to discuss this issue and ACLU SoCal's other policy recommendations for body-worn video with you further.

Sincerely,



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Appendix E:

Knowing the law



KNOWLEDGE IS POWER: What is the Law?

FREQUENTLY ASKED QUESTIONS

Through our research we learned that local police officers do not know what their authority is with respect to enforcing immigration laws. Here are some answers to some frequently asked questions.

Local Enforcement of Immigration Laws

Is being present or residing in the United States without proper documentation (being an undocumented immigrant) a crime?

No. The act of being present or residing in the United States without proper documentation is not, by itself, a crime. Generally, undocumented immigrants enter the country one of two ways: (1) they enter “without inspection,” meaning they enter the country by crossing the border without knowledge or permission from federal immigration officials; or (2) they enter the country with a proper visa, i.e., for work or school, but then overstay their visa by continuing to work after their visa has expired, drop out of school, or violate the conditions of their visas in some way. Persons who enter the country with a visa and at some later time violate the conditions of their visas in some way, have not committed any crime.

The **act of entering** the United States by crossing the border without the knowledge of or permission from immigration officials is known as improper entry and is generally a federal misdemeanor.¹ Local police can enforce federal criminal laws.² However, in California (as is true in many states), a police officer may arrest for a misdemeanor only when that offense is committed in the officer’s presence.³ “As the misdemeanor offense of improper entry into the United States is complete upon the improper entry itself, no California police officer can arrest for misdemeanor illegal entry once the [immigrant] has reached a place of [rest].”⁴

That said, mere presence in the United States without proper documentation, in the absence of a previous removal order and unauthorized reentry, is **not a crime** under federal law.

¹ See 8 U.S.C. § 1325. Improper entry can be charged a felony if the person is reentering the country after previously being deported. See 8 U.S.C. § 1326 (an individual previously “deported or removed” who “enters, attempts to enter, or is at any time found in” the United States without authorization may be punished by imprisonment up to two years).

² *Sturgeon v. Bratton*, 174 Cal. App. 4th 1407, 1413 (2009).

³ *Id.*

⁴ *Id.*



Do local and state police have the authority to investigate civil violations of federal immigration laws?

No. Enforcement of immigration law is a federal obligation and has historically been off-limits to state and local law enforcement. Although it is a violation of federal immigration law to remain in the country without authorization, the violation subjects a person to **civil** penalties, such as deportation or removal, not criminal penalties such as a fine and incarceration.

The role of local police and federal immigration officials is quite different. Generally, state and local police enforce criminal laws, prevent crime, and work to improve the quality of life for all residents in the communities they serve. Local police do not have the authority to investigate whether a person is in the United States with proper documentation or should be admitted into the country or be deported.⁵ Instead, to preserve uniformity and respect the supremacy of federal laws, the admission, exclusion, and deportation of immigrants is exclusively left to the authority of the federal government. Local police can neither commence deportation proceedings nor arrest individuals for improper entry, nor take direct action against an individual they believe to be in this country “illegally.”⁶

Can federal immigration authorities mandate or require that local and state police investigate whether a person is in the U.S. without proper documentation or should be admitted into the country or be deported?

No. The federal government’s obligation to administer and enforce immigration laws is so exclusive that it cannot mandate or require state and local governments to engage in such activity without the state and/or local government’s consent.⁷

Can state or local government create laws that regulate immigration?

No. Congress has exclusive authority to legislate in the immigration field and regulate immigrants present in the United States.⁸ Therefore, states cannot make it a crime for noncitizens to carry an alien registration card, punish an immigrant for working or seeking work, or allow police officers to make warrantless arrests based on their suspicion that the person is deportable.⁹

⁵ *Sturgeon v. Bratton*, 174 Cal. App. 4th 1407, 1412 (2009).

⁶ *Id.* at 1413.

⁷ *Id.* at 1412 (citing *City of New York v. United States*, 179 F.3d 29, 33-35 (2d Cir. 1999)).

⁸ *DeCanas v. Bica*, 424 U.S. 351, 354-55 (1976).

⁹ *See Arizona v. United States*, 132 S.Ct. 2492 (2012)



What is California Penal Code section 834b?

California Penal Code section 834(b), which resulted from Proposition 187 (California's 1994 anti-immigrant voter initiative) required every law enforcement officer in California to fully cooperate with federal immigration officials and inquire about the immigration status of individuals who were arrested. However, in 1995 Proposition 187 and the provision that created **Penal Code section 834b was struck down as unconstitutional and deemed unenforceable**.¹⁰ But Section 834(b) was only repealed and removed from the penal code in 2015. Accordingly, some local police officers are often confused and believe they have the authority to enforce immigration laws.

Do undocumented immigrants have constitutional rights?

Yes. "The Fourteenth Amendment to the Constitution is not confined to the protection of citizens. It says: 'Nor shall any state deprive any person of life, liberty or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.' These provisions are universal in their application to all persons within the territorial jurisdiction, without regard to any differences of race, of color, or nationality; and the equal protection of the laws is a pledge of the protection of equal laws."¹¹

Racial Profiling

What is racial profiling?

"Racial Profiling" refers to the discriminatory practice by law enforcement officials of targeting individuals for suspicion of crime based on the individual's race, ethnicity, religion or national origin. Criminal profiling, generally, as practiced by police, is the reliance on a group of characteristics they believe to be associated with crime. Examples of racial profiling are the use of race to determine which drivers to stop for minor traffic violations (commonly referred to as "driving while black or brown"), or the use of race to determine which pedestrians to search for illegal contraband.

Is racial profiling illegal?

Yes. The United States Supreme Court has held that racial profiling violates the constitutional requirement that all person be given equal protection under the law.¹²

¹⁰ *League of United Latin Am. Citizens v. Wilson*, 908 F.Supp. 755, 776 (C.D. Cal. 1995).

¹¹ *Wong Wing v. United States*, 163 U.S. 228 (1896).

¹² *Whren v. United States*, 517 U.S. 806, 813 (1996).