

CALIFORNIA RACIAL AND IDENTITY PROFILING ADVISORY BOARD (BOARD)

<https://oag.ca.gov/ab953/board>

MEETING MINUTES

November 29, 2022 10:00 a.m. - 12:30 p.m.

Board Members Present: Co-Chair Steven Raphael, Co-Chair Melanie Ochoa, Member Angela Sierra, Member Andrea Guerrero, Member Manju Kulkarni, Member Cha Vang, Member Brian Eric Kennedy, Member Lily Khadjavi, Member Abdul Pridgen, Member Amanda Ray, Member Rich Randolph, Member Hawkins, Member Taylor, Member William Armaline, Member DJ Criner, and Member Ronaldo Villeda

Board Members Absent: Member Bill Ayub

1. Call to Order by Board Chairs

Co-Chair Raphael called the meeting to order and asked each RIPA Board Member (herein Board) introduced themselves. Co-Chair Raphael concluded introductions with a welcome to all attending the meeting.

2. Approval of October 12, 2022 Minutes

Co-Chair Raphael opened the floor for the Board to discuss or make a motion to approve the October 12, 2022 meeting minutes. Member Kennedy moved to approved the meeting minutes as is with Member Criner [06:00] seconding the motion.

Ayes: Co-Chair Steven Raphael, Co-Chair Melanie Ochoa, Member Angela Sierra, Member Andrea Guerrero, Member Manju Kulkarni, Member Cha Vang, Member Brian Eric Kennedy, Member Lily Khadjavi, Member Abdul Pridgen, Member Amanda Ray, Member Rich Randolph, Member William Armaline, Member DJ Criner, and Member Ronaldo Villeda

Nays: None

Abstentions: None

With all present members voting Aye, the motion passed.

3. Update from the Department of Justice

Allison Elgart Deputy Attorney General (DAG) with the California Department of Justice presented on DOJ updates. DAG Elgart informed the Board that Sheriff Bill Ayub has retired and subsequently resigned from the Board. She goes further to thank Member Ayub for his long participation in RIPA and on behalf of all wishes him well in his retirement.

In regards to the Board's plan to provide legislative briefings of the report, DAG Elgart informed the Board that Members Guerrero and Ochoa will represent them at these briefings. The legislative briefings are scheduled to occur on December 13, 2022. To prepare for this, drafts and executive summary will be provided to the legislature prior to the briefings.

Board Member Randolph asked inquired to how members were selected to participate in the legislative briefings. Supervising Deputy Attorney General (SDAG) Nancy Beninati informed that Board members were asked to volunteer in the last full board meeting and that Members Guerrero and Ochoa were the only ones to do so.

DAG Elgart stated that as in previous years the Board could send the full report to the State Legislature and the POST Commission with transmittal letters highlighting the Board's specific recommendations for each government body similar to the Board's instructions to do so last year. Member Sierra inquired if the Board should take an improved approach, based on lessons learned from doing this task last year, to sending out the report and executive summary to the State Legislature.. DAG Elgart explained she was seeking to confirm this process in light of the December legislative briefing by the Board

DAG Elgart informed the Board the steps the DOJ has taken to comply with data requests sent. She mentioned that while normally the Open Justice website would house the RIPA data for the public to view, with the website being down and to accommodate data requests, the DOJ is treating data requests as public records act requests to accommodate. Although it is unclear when Open Justice will be online, the DOJ will ensure that the RIPA data is uploaded once the website is back online. Co-Chair Raphael asked whether the RIPA website would provide instructions on how to submit data requests in light of the status of Open Justice. DAG Elgart stated that the RIPA website will direct the public to the Open Justice website along with how to submit data requests.

Last, DAG Elgart stated that the current meeting would be the last opportunity for Board members to make any substantive changes to the 2023 report. Although a vote to approve the report would still allow for the Co-Chairs to provide direction per the Board's discussion today and final review of the report, she noted that changes would holistically relate to refinement of the text (e.g., grammar, wordsmithing, etc.).

SDAG Beninati informed the Board that the DOJ would handle the media tasks associated with the release of the report. She relayed that the DOJ would publish and publicize the final report around the first week of January. Should the Board get requests for media inquiries, she encouraged the Board to participate but reminded them that they would be representing the board in that capacity and advised to stick to answers found in the report. Additionally, she asked the Board to please inform the DOJ should they receive any media inquiries in an effort to keep track on which media outlets are asking and to possibly field the requests to the Co-Chairs should the invited board member feel uncomfortable to participate in media related events.

In reference to the media updates, Member Kulkarni inquired about whether there was an established timeline for the rollout, whether DOJ members were authorized to speak on RIPA's behalf, on which media outlets would receive the report, and if there were any talking points to be provided to the Board to best facilitate these events. SDAG Beninati answered that in addition to the DOJ's normal network, the DOJ's Civil Rights Enforcement Section has compiled a network of advocates which would be included in the report's circulation. She added that historically the media have paid attention to the report's release and does not anticipate any problems with the report's circulation and encouraged the Board to circulate the report within their own networks as

well. Specific to whether talking points would be provided, SDAG Beninati directed the Board to refer to the executive summary as well as the best practices recommendations pullouts to be provided to the State Legislature and the Post Commission.

The conversation continued with Co-Chairs Raphael and Ochoa providing additional guidance and tips to the Board when speaking to media which included:

- To rely on the executive summary as it best enumerates our findings;
- To explain terminology during conversations to help the media and the public understand the intent behind certain terms used; and
- To make it clear whether the statements said is in the member's individual capacity or on behalf of the Board.

SDAG Beninati provided an update regarding RIPA's data collection statute. She reported that AB 2773 amended Government Code Section 12525.5 by providing a new data element which lists the reason given to the person stopped at the time of the stop. This change will require the DOJ to go through a formal rulemaking process as we cannot perform a Section 100 in order to get the easily change implemented into the regulations. She noted that the DOJ has assigned DAG Tanya Koshy to facilitate these actions as she was the person assigned to do it last time. The DOJ will plan to workshop these changes in a meeting in early February or March 2023 to allow the Board to weigh in on the process.

4. Board Discussion of the 2023 RIPA Report

Co-Chair Ochoa opened the discussion acknowledging and thanking the DOJ team involved for the herculean effort of performing the tasks necessary to ensure the report was created. She then opened the floor for the Board to provide their comments.

Co-Chair Raphael wanted to highlight that the quick facts documents provided did a good job of summarizing the three main points with regards to the general demographics of stops, the differential outcomes, and the youth outcomes which were covered this year. He was pleased with the accessibility and visuals that the document provided. In conclusion, he also thanked the DOJ for the efforts they have provided.

Member Guerrero thanked the DOJ for their efforts and stated that the report would help inform future policy discussions. As feedback, she inquired to ensure that the numbers reported on page 3 of the executive summary were accurate given that it discusses the most commonly reported reason for a stop across all racial ethnic groups; her recommendation was to provide additional context to the numbers provided to assist the reader gains the correct information. Research Data Supervisor Kevin Walker, thanked Member Guerrero for the information and informed that the referenced section would be edited with additional information for the reader's convenience.

Member Sierra thanked both the Board, the DOJ, and members of the public for their amazing work as she has just recently returned to serve as a member of the Board. Member Kennedy held similar sentiments, thanking all for their thoughtfulness towards the public's engagement in this process. Member Khadjavi also thanked the DOJ for their work and urged the Board to approve of the report.

Co-Chair Ochoa had several comments specific to the quick facts section and the pages 56 and 57 of the report. On page 56 and 57, the report indicates that bicycle stops made up the larger percentage of stops; however, to Co-Chair Ochoa's recollection, prior discussion seemed to indicate that the stops were bicycle related rather than specific to individuals stopped on bicycles. Research Data Supervisor Walker, confirmed Co-Chair Ochoa's statement and noted that they will change the wording from bicycle stops (i.e., stops made while someone was on a bicycle) to stops related to bicycle related violations. Further, Walker confirmed that new regulations in 2024 will help juxtapose the two into their own separate categories.

Another request Co-Chair Ochoa had was whether it was possible to combine the data point graphics regarding the percentage of stops that are self-initiated and the ones that are in response to calls for service. Further, she asked if the collated graphic could be augmented to provide a text explanation that would highlight the difference age groups found in the graphic. She also recommended for "consent-search only" to be properly defined as it can provide insight on no actions stops and relay that those stopped were not engaged in criminal activity. Co-Chair Ochoa also wanted to reconcile the facts that Black and Latine(x) both experienced the highest stop rates for certain actions (e.g., searched curbside attention handcuffing, orders to exit their vehicles, highest rates of no actions taken, etc.) to best relay to the reader the findings of the report. She also advocated for Latine(x) to also be used in the graphic rather than Hispanic to provide consistency.

Co-Chair Ochoa recommended to include the treatment of folks perceived to have disabilities despite being the small percentage of stops conducted as it would highlight the actions taken against those with disabilities which could help augment the section on folks likely to be killed by police. She also wanted to list the race of individuals who had police called on them to preface the discussion that leads into a discussion of the Colorado State University incident.

Member Randolph thanked the DOJ for their work prior to providing his comments. Member Randolph stated that the Board should have a goal of ensuring the means of success. Member Randolph shared concerns that the report required further work as it may not reflect accurate information. As an individual whose experienced racial bias on-duty and off-duty, he could not in good conscience stand behind the report. He stated that he was concerned that the Board, as a non-partisan body, may have unfairly painted a more negative picture on the men and women that work hard every day.

Member Randolph provided a number of examples. For one, he thought that the use of media articles as sources could make the report's credibility vulnerable to a strawman fallacy as it fails to provide a thorough literature review. He referenced the use of media articles on stories outside the state as unacceptable for a state focused report and shared that his concern is shared by some members of the State's legislative assembly. Member Randolph was also concerned with the verbiage used to describe law enforcement. Additionally although the numbers are accurate he is worried that the inferences made from the findings may be speculative.

Member Guerrero responded to Member Randolph's concerns. Member Guerrero started by noting that the data provided is uncontested in its veracity and that the anecdotes merely provide illustrations of that data. Although she recognized Member Randolph's concerns regarding the use

of out-of-state media articles as anecdotes, she highlighted that discussion on whether a specific anecdote is acceptable would have been vetted in subcommittee meetings and that moving forward all board members should strive to do so at that time.

Member Criner provided his thoughts on the report. He began by thanking the DOJ staff for the detail and transparency the report provides. Member Taylor also thought that the data provided in the report is incredibly useful in the Board's efforts to speak on this uncomfortable information especially given that it is sourced from law enforcement agencies. She stated that the conversation of implicit bias does not solely reflect possible shortcomings in law enforcement but can also be indicative of the nation and its people as a whole; the report can help elucidate people are trained or rely on the practice to survive. Member Taylor reminded the board that this uncomfortable conversation demonstrates that the Board is serving its intended function.

Member Sierra agreed that the conversation being had is important. She also stated that she thought that the report's focus on the disparities was data-based and thoughtful. She also noted that the report did not expressively blame a particular organization and rather acted as a conversation starter.

Member Ray inquired as to the Board's recommendation to the state legislature to evaluate moving to a probable cause standard for stops that the RIPA data shows has a statistical disparity as her agency and others already implement a probable cause standard for all stops. Member Guerrero provided a response to Member Ray's question as she is Co-Chair of the Policy Subcommittee. She noted that the Policy Subcommittee found that not all law enforcement agencies used probable cause as the precursor for their pretext or consensual searches and the recommendation was made as a result of that finding. Member Ray thanked Member Guerrero for the response and recommended that it be noted that some law enforcement agencies adhere to the recommendation. Member Ray also advocated to include the benefits of traffic enforcement as there were examples provided in subcommittee meetings that were vetted and yet were not included in the report. In closing her comments, she thanked all those involved for her efforts. Co-Chair Raphael responded that it may be beneficial to highlight subtle incidents (e.g., a broken tail light, etc.) that cause safety concerns in the future to help understand law enforcement's decision making process to stop individuals under these scenarios. Member Guerrero suggested that the concern could be covered in public safety section of a future report as the Policy Subcommittee also found the conversation warranted. Member Ray agreed with Co-Chair Raphael and Member Guerrero that a public safety section is warranted.

Member Guerrero highlighted that the introduction and conclusion section of the report could be used to established the shared interest of all shareholders involved (e.g., the community, law enforcement, etc.). Further she noted that it could be an opportunity for those reading to view law enforcement's role as a forward entity addressing the concerns listed in the report. Member Guerrero concluded by inviting the Board to review past report introductions and conclusions as examples of this opportunity.

Member Pridgen thanked all those involved. He noted that the data should not be seen as an indictment but as a tool for improvement. He mirrored Member Taylor's sentiments stating that

the data can be applied to human nature as a whole. Member Pridgen stated he recognized the need for balance, although the opportunity may not be present in this particular report, the sentiment can be carried in future reports; data on the promising practices in this report can help demonstrate law enforcements positive efforts in this field which can make other law enforcement agencies strive for. Co-Chair Ochoa reminded the Board members that there is nowhere in the report that covers the minds of law enforcement officers. Rather, the report focused on identifying policies which lead to these negative outcomes in an attempt to change them. To address concerns that the report may negatively impact law enforcement recruitment and retention efforts, Member Taylor stated that the report was not the catalyst for the negative outlook on law enforcement. Rather it only helps to validate the affected communities concerns which in turn can begin the process of restoring a good relationship between law enforcement and affected communities.

SDAG Beninati directed the Board to review page 71's paragraph provided by the National Highway Traffic Safety Administration which speaks on the issue of balance. She invited the Board to provide any amendments to that section to best reflect the Board's concern on balance. After some discussion, Co-Chair Ochoa cautioned the Board to not equate more traffic stops resulting in more safety. She reminded the Board that traffic stops can also result in the death of those stopped. She also framed the Board's discussion noting that the recommendation is for stops which RIPA data has demonstrated racial disparity in; the report is not trying to advocate for no traffic stops, but rather for a particular subset of stops. Co-Chair Ochoa recommended that the text be changed to reflect that there are dangers presented in both a lack of traffic stops and in the result of a traffic stop.

Member Armaline recommended that the information which highlighted youth disparities should be highlighted. Per his reading, he felt that the findings on youth disparities were relatively hidden when compared to others; one would have to read the report in-depth to discover the finding.

After the discussion and to help facilitate the desire of the Board, Co-Chair Ochoa enumerated the changes discussed for a vote:

1. Whether to include a footnote that encourages a conversation on the definition of public safety;
2. Whether a change is needed to the recommendation to state legislature to evaluate moving to a probable cause standard for stops that the RIPA data shows has a statistical disparity to note that law enforcement agencies have this standard already in practice; and
3. Whether to delegate changes to the Co-Chairs to modify the traffic impact piece in such a way that both acknowledges the existence of data that is going in both ways.

Motion

Co-Chair Ochoa moved to adopt the three changes aforementioned.

Upon discussion of the motion, Member Ray noted the second recommendation should omit "CHP" and simply reference that there are California law enforcement agencies beholden to the probable cause standard. Co-Chair Ochoa noted that the inclusion of "CHP" should be made as it would allow law enforcement agencies seeking to replicate the practice a resource to turn to.

Member Kulkarni moved to amend the motion so that the wording for the recommendation reflect “including, but not limited to CHP...”. Co-Chair Ochoa seconded the motion.

Ayes: Member Sierra, Co-Chair Ochoa, Co-Chair Raphael, Member Pridgen, Member Ray, Member Criner, Member Guerrero, Member Kennedy, Member Kulkarni, Member Hawkins, Member Armaline, and Member Villeda

Nays: None

Abstentions: Member Taylor and Member Randolph

The motion passed and the recommendations are adopted as amended.

5. Public Comment

Co-Chair Ochoa opened the agenda item and invited members of the public to provide public comment.

As no public comment could be readily heard, Co-Chair Ochoa moved the meeting to the next agenda item.

6. Break

Upon approval of the Board, Co-Chair Ochoa moved the meeting to the next agenda item.

7. Final Action on RIPA Report

SDAG Beninati provided guidance on process and stated that the next item on the agenda is where the Board could vote to approve the report and could direct the Co-Chairs and the DOJ to finalize it.

Member Kulkarni inquired whether the Board could send the transmittal letters to additional organizations (e.g., other law enforcement agencies and oversight bodies) and provide a briefing to POST as well. SDAG Beninati responded noting that this can be performed, upon direction by the Board, by sending a cover letter to law enforcement chiefs who can then circulate the letter to throughout their agencies. Co-Chair Ochoa also inquired if the report’s circulation could also extend to local legislative bodies (e.g., LA City Council). SDAG Beninati noted that these requests could be completed during DOJ’s circulation as many of the types of organizations referenced are included in the listserv (i.e., mailing list). She also noted Member Guerrero’s attendance at the POST Commission last year. Co-Chair Ochoa also inquired if a transmittal letter template can be provided so that the Board could use it to circulate the report at the local level.

Motion

Co-Chair Ochoa moved to approve this year’s report and to delegate the Co-Chairs to work with the DOJ to perform any final wordsmithing needed. Member Kulkarni seconded the motion.

Ayes: Member Taylor, Member Ochoa, Co-Chair Raphael, Member Pridgen, Member Ray, Member Criner, Member Guerrero, Member Kennedy, Member Kulkarni, Member Hawkins, and Member Villeda

Nays: Member Randolph

Abstentions: None

The motion passed.

8. Election of New Co-Chairs For 2023

SDAG Beninati opened the agenda item by providing that the Co-Chair positions have a one year term and are selected by the majority of the Board. Before the election, SDAG Beninati thanked former Co-Chairs Ochoa and Raphael for the excellent service. She then opened the floor for nominations.

Nominations

Member Raphael nominated Member Guerrero for Co-Chair which she accepted.

Members Guerrero and Sierra nominated Member Pridgen which he accepted.

Member Kennedy nominated Member Criner which he accepted.

Member Kulkarni nominated Member Ochoa for a second term which she accepted.

Hearing no additional nominations SDAG Beninati moved forward to the voting process.

Co-Chair Vote

- Member Taylor voted for Members Ochoa and Pridgen
- Member Sierra voted for Members Pridgen and Guerrero
- Member Ochoa voted for Members Pridgen and Guerrero
- Member Raphael voted for Members Pridgen and Guerrero
- Member Randolph voted for Members Pridgen and Criner
- Member Pridgen voted for Members Guerrero and himself
- Member Ray voted for Members Pridgen and Guerrero
- Member Criner voted for Members Pridgen and Guerrero
- Member Guerrero voted for Members Pridgen and Ochoa
- Member Kennedy voted for Members Ochoa and Criner
- Member Kulkarni voted for Members Ochoa and Pridgen
- Member Hawkins voted for Members Ochoa and Pridgen
- Member Villeda voted for Members Guerrero and Ochoa

The members to become the next Co-Chairs were Members Pridgen and Guerrero. SDAG Beninati congratulated the new Co-Chairs. SDAG Beninati also noted that Members Ochoa and Raphael would continue their duties as Co-Chairs through to mid-January to allow for cohesion.

9. Adjourn

Prior to adjourning, DAG Elgart shared that the DOJ and Co-Chairs will finalize the report as directed by the Board before working on the transmittal and template letter. Additionally, the DOJ will contact the Board to discuss the new regulations implemented.

Member Kulkarni also provided additional thoughts regarding talking points. She stated that the Communications Department at the DOJ should be involved as an executive summary may not be sufficient. She would also recommend that the Co-Chairs be the Board's primary speakers to ensure consistency with the report's findings. SDAG Beninati noted that this recommendation would require a motion and vote to implement. Co-Chair Ochoa recommended that the DOJ could suggest prefacing language to help those on the Board to distinguish their individual views from the Board's when speaking to media. As someone familiar with media engagements, Member Guerrero advocated that all Board members be able to engage in speaking engagements. She advocated that the Co-Chairs to develop some talking points alongside the DOJ to help the Board. She went further to note that this would allow for consistency on the Board's stance throughout the members but also allow for individuals to speak on their opinions. Special Assistant Attorney General Damon Brown informed the Board that they would reach out to the relevant DOJ department to inquire about the Board's request.

Co-Chair Ochoa thanked all and adjourned the meeting.