

OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

POLICE ACCOUNTABILITY BOARD REGULAR MEETING

Wednesday, December 8, 2021
7:00 P.M.

Board Members:

ISMAIL RAMSEY, CHAIR
MICHAEL CHANG, VICE-CHAIR
KITTY CALAVITA

REGINA HARRIS
JULIE LEFTWICH
DEBORAH LEVINE

NATHAN MIZELL
JOHN MOORE III
CHERYL OWENS

PUBLIC ADVISORY: THIS MEETING WILL BE CONDUCTED EXCLUSIVELY THROUGH VIDEOCONFERENCE AND TELECONFERENCE

Pursuant to Government Code Section 54953(e) and the state declared emergency, this meeting will be conducted exclusively through teleconference and Zoom videoconference. The COVID-19 state of emergency continues to directly impact the ability of the members to meet safely in person and presents imminent risks to the health of the attendees. Therefore, no physical meeting location will be available.

To access the meeting remotely: join from a PC, Mac, iPad, iPhone, or Android device using this URL: <https://us02web.zoom.us/j/82237902987>. If you do not wish for your name to appear on the screen, use the drop-down menu and click on "rename" to rename yourself to be anonymous. To request to speak, use the "raise hand" icon on the screen. To join by phone: Dial 1 669 900 6833 and enter Meeting ID 822 3790 2987. If you wish to comment during the public comment portion of the agenda, press *9 and wait to be recognized.

AGENDA

1. **CALL TO ORDER & ROLL CALL** (5 minutes)
2. **APPROVAL OF AGENDA** (5 minutes)
3. **PUBLIC COMMENT** (TBD)

(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on any matter within the Board's jurisdiction at this time.)

The Police Accountability Board and Office of the Director of Police Accountability (ODPA) were created to provide independent civilian oversight of the Berkeley Police Department. They review and make recommendations on police department policies, and investigate complaints made by members of the public against police officers. For more information, contact the ODPA.

1947 Center Street, 5th Floor, Berkeley, CA 94704 TEL: 510-981-4950 TDD: 510-981-6903 FAX: 510-981-4955
Website: www.cityofberkeley.info/dpa/ Email: dpa@cityofberkeley.info

4. **APPROVAL OF MINUTES** (3 minutes)
 - a. Regular meeting of November 10, 2021.
 - b. Special meeting of November 17, 2021.
5. **CHAIR'S REPORT** (5 minutes)

Update from Board member Mizell on Reimagining Public Safety Task Force.
6. **DIRECTOR OF POLICE ACCOUNTABILITY'S REPORT** (5 minutes)

Status of complaints; update on training; other items.
7. **CHIEF OF POLICE'S REPORT** (10 minutes)

Crime/cases of interest, community engagement/department events, staffing, training, and other items of interest.
8. **SUBCOMMITTEE REPORTS (discussion and action)** (10 minutes)

Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:

 - a. Fair & Impartial Policing Implementation.
 - b. Director Search – met Dec. 7.
 - c. Regulations – met Nov. 30.
 - d. Mental Health Response (Policy Complaint #7) – meeting to be scheduled.
9. **OLD BUSINESS (discussion and action)**
 - a. Further report on City Attorney conflict-of-interest issues. (10 minutes)
 - b. Revision of Policy 425, Body Worn Cameras, to broaden access by PAB and ODP. (15 minutes) (*See policy in Oct. 27, 2021 packet, p. 15.*)
 - c. Update from Interim Chief Louis regarding the October 15 incident involving a gun on the Berkeley High campus. (10 minutes)
 - d. Appoint additional members to Mental Health Response Subcommittee (Policy Complaint #7). (10 minutes)
10. **NEW BUSINESS (discussion and action)**
 - a. Update from Interim Chief Louis regarding progress on implementing Council directives regarding Fair and Impartial Policing. (30 minutes)
 - b. Authorize Chair and Vice-Chair to appear at December 14, 2021 City Council meeting regarding PAB Standing Rules. (5 minutes)

From: Interim Director
 - c. Vaccination status of BPD employees. (10 minutes)

From: Chair Ramsey

- d. Approve PAB regular meeting schedule for 2022. (10 minutes)
From: Interim Director

11. PUBLIC COMMENT (TBD)

(Speakers are generally allotted up to three minutes, but may be allotted less time if there are many speakers; they may comment on items on this agenda only.)

Closed Session

Pursuant to the Court's order in *Berkeley Police Association v. City of Berkeley, et al.*, Alameda County Superior Court Case No. 2002 057569, the Board will recess into closed session to discuss and take action on the following matter(s):

- 12. CONSIDER RECOMMENDATION FOR ADMINISTRATIVE CLOSURE OF COMPLAINT #3** (continued from Nov. 10, 2021 meeting)
- 13. CONSIDER FINDINGS AND RECOMMENDATIONS OF INTERIM DIRECTOR IN COMPLAINT #1 AND DECIDE WHETHER A HEARING IS NEEDED**
- 14. CONSIDER FINDINGS AND RECOMMENDATIONS OF INTERIM DIRECTOR IN COMPLAINT #2 AND DECIDE WHETHER A HEARING IS NEEDED**

End of Closed Session

- 15. ANNOUNCEMENT OF CLOSED SESSION ACTION** (1 minute)
- 16. ADJOURNMENT** (1 minute)

Communications Disclaimer

Communications to the Police Accountability Board, like all communications to Berkeley boards, commissions or committees, are public record and will become part of the City's electronic records, which are accessible through the City's website. Please note: e-mail addresses, names, addresses, and other contact information are not required, but if included in any communication to a City board, commission or committee, will become part of the public record. If you do not want your e-mail address or any other contact information to be made public, you may deliver communications via U.S. Postal Service or in person to the Board Secretary. If you do not want your contact information included in the public record, do not include that information in your communication. Please contact the Board Secretary for further information.

 Communication Access Information (A.R. 1.12)

To request a disability-related accommodation(s) to participate in the meeting, including auxiliary aids or services, please contact the Disability Services specialist at 981-6418 (V) or 981-6347 (TDD) at least three business days before the meeting date.

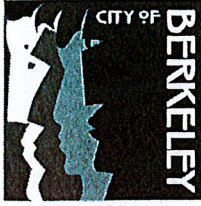
SB 343 Disclaimer

Any writings or documents provided to a majority of the Board regarding any item on this agenda will be made available for public inspection at the Office of the Director of Police Accountability, located at 1947 Center Street, 5th Floor, Berkeley, CA.

Contact the Director of Police Accountability (Board Secretary) at dpa@cityofberkeley.info

**POLICE ACCOUNTABILITY BOARD (PAB)
REGULAR MEETING ATTACHMENTS
DECEMBER 8, 2021**

<u>MINUTES</u>	
November 10, 2021 Regular Meeting Draft Minutes.	Page 7
November 17, 2021 Special Meeting Draft Minutes.	Page 11
<u>AGENDA-RELATED</u>	
Item 8. – Subcommittee List updated 11-18-2021.	Page 13
Item 10.a. – 10-29-2021 Letter to the Interim Police Chief from the Police Accountability Board Chairperson, re Fair & Impartial Policing Implementation.	Page 15
Item 10.e. – Memo from Interim DPA re proposed regular meeting schedule for 2022, attaching proposed schedule and City Clerk’s memo.	Page 17
<u>COMMUNICATIONS</u>	
11-10-2021 Memo to the Mayor and City Council Members, from the City Manager re Use of Pepper Spray Incident.	Page 25
11-10-2021 Berkeley Police News: Berkeley City Council Approves BPD’s use of OTS Grant.	Page 31
11-2-2021 www.sfchronicle.com article: Police killings are drastically undercounted, study says. What role do California sheriffs play?	Page 33
11-8-2021 www.propublica.org article: Police Watchdog Calls for Full Access to Body Cam Footage. The NYPD Says No.	Page 37
11-8-2021 www.nytimes.com article: Re-Fund the Police? Why It Might Not Reduce Crime.	Page 41
11-9-2021 www.nytimes.com article: Black Voters Want Better Policing, Not Posturing by Progressives.	Page 45
11-22-2021 www.propublica.org article: “If Everybody’s White, There Can’t Be Any Racial Bias”: The Disappearance of Hispanic Drivers From Traffic Records.	Page 49



OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

DRAFT

POLICE ACCOUNTABILITY BOARD
REGULAR MEETING
MINUTES
(draft)

Wednesday, November 10, 2021, 7:00 P.M.

No physical location; meeting held exclusively through videoconference and teleconference.

1. CALL TO ORDER & ROLL CALL BY CHAIR RAMSEY AT 7:02 P.M.

Present: Board Member Ismail Ramsey (Chair)
Board Member Michael Chang (Vice-Chair) (7:10 p.m. - 8:00 p.m.)
Board Member Kitty Calavita
Board Member Regina Harris
Board Member Juliet Leftwich
Board Member Deborah Levine (arrived 7:50 p.m.)
Board Member John Moore
Board Member Cheryl Owens

Absent: Board Member: Nathan Mizell

ODPA Staff: Katherine J. Lee, Interim Director of Police Accountability

BPD Staff: Lt. Rob Rittenhouse

2. APPROVAL OF AGENDA

Motion to approve the agenda as modified to postpone Item #9.d. (viewing bod-worn camera footage) and #12 (administrative closure in Complaint #3). Moved/Second (Calavita/Leftwich) Motion Carried by general consent.

3. PUBLIC COMMENT

7 speakers.

4. APPROVAL OF MINUTES

Motion to approve Regular Meeting Minutes of October 27, 2021 Moved/Second (Leftwich/Calavita) Motion Carried by general consent.

5. CHAIR'S REPORT

Chair Ramsey reported:

- Reminder to Board members to arrange for their ride-alongs.
- Board's letter to Chief for presentation on Fair & Impartial implementation was sent last week.
- Vice-Chair Chang reported about his participation in a BPD public service announcement on hate crimes reporting; he did a brief account of the difference between hate violence and hate crimes.

6. DIRECTOR OF POLICE ACCOUNTABILITY'S REPORT

The Interim Director reported:

- No new complaints filed since the last meeting.
- Reminder re special meeting Nov 17 for a couple training topics.
- Draft final report on Reimagining public safety in Berkeley issued and included in packet; also included is info about 4 community meetings.
- Standing Rules mailed with packet.
- Item re ALPR (Automated License Plate Readers) presented to Council's Public Safety Police Committee is also in packet, as well as a community report.
- Included Berkeleyside article in packet regarding events in Berkeley in the 1970s; includes a brief description of the genesis of the Police Review Commission.

7. CHIEF OF POLICE'S REPORT

Lt. Rittenhouse reported on behalf of Interim Chief Louis:

- Last week there was a solo vehicle accident at the Marina resulting in a death.
- Currently 155 sworn officers. One lateral returned to BPD.
- Training – Another 4-hour update on Fair & Impartial Policing was held.

Lt. Rittenhouse answered questions from Board members.

Motion to suspend the rules and take up Item #10.b. next.

Moved/Second (Chang/Moore) **Motion Carried by general consent**

8. SUBCOMMITTEE REPORTS (discussion and action)

Report of activities and meeting scheduling for all Subcommittees, possible appointment of new members to all Subcommittees, and additional discussion and action as noted for specific Subcommittees:

- a. Fair & Impartial Policing Implementation – Met Nov. 4. Chief has been invited to address the Board.
- b. Director Search – Meeting being scheduled.

- c. Regulations – Met Nov. 2 and Nov. 9. Working hard.

9. OLD BUSINESS (discussion and action)

- a. Follow-up on whether the City Attorney's Office has determined it can meet in closed session with the PAB regarding the confidential memos on: 1) the obligation to meet and confer over provisions of the Interim Regulations for handling complaints against sworn officers; and 2) lawful changes to the hearing process to correct imbalances.

Chair reported on meeting with City Attorney, Deputy City Attorney and Interim Director.

- b. Further report on City Attorney conflict-of-interest issues.

See above report.

- c. Policy complaint – Determine how to proceed on policy Complaint #7.

Motion to form subcommittee to review policies implicated in Policy Complaint #7.

Moved/Second (Calavita/Harris) **Motion Carried.**

Ayes: Calavita, Harris, Leftwich, Levine, Moore, Owens, and Ramsey.

Noes: None

Abstain: None

Absent: Chang, Mizell

Chair Ramsey appointed Board members Levine and Harris to the Subcommittee.

To be continued at the next meeting for possible additional Board and public member appointments.

- d. Revision of Policy 425, Body Worn Cameras, to broaden access by PAB and ODP.

Postponed to the next meeting.

10. NEW BUSINESS (discussion and action)

- a. Proposal for Board members to fulfill training requirements in part by reading materials on recommended list.

Discussed. Interim Director to report back.

- b. Update from Interim Chief Louis regarding the October 15 incident involving a gun on the Berkeley High campus.

(Heard following Item #7.)

Lt. Rittenhouse reported on the incident and answered questions.

- c. Training: Quasi-judicial obligations of the Police Accountability Board.

Presentation made and questions answered by Interim Director Lee.

11. PUBLIC COMMENT

No speakers.

Closed Session

Pursuant to the Court's order in *Berkeley Police Association v. City of Berkeley, et al.*, Alameda County Superior Court Case No. 2002 057569, the Board will recess into closed session to discuss and take action on the following matter(s):

12. CONSIDER RECOMMENDATION FOR ADMINISTRATIVE CLOSURE OF COMPLAINT #3

Postponed to the next meeting.

13. CONSIDER RECOMMENDATION FOR ADMINISTRATIVE CLOSURE OF COMPLAINT #9

Motion to approve Complaint for administrative closure.

Moved /Second (Owens/Moore) **Motion Carried**

Ayes: Calavita, Harris, Leftwich, Levine, Moore, Owens, and Ramsey.

Noes: None

Abstain: None

Absent: Chang, Mizell

14. CONSIDER FINDINGS AND RECOMMENDATIONS OF INTERIM DIRECTOR IN COMPLAINT #4 AND DECIDE WHETHER A HEARING IS NEEDED

Motion to approve the Interim Director's findings and recommendations.

Moved/Second (Leftwich/Harris) **Motion Carried**

Ayes: Calavita, Harris, Leftwich, Levine, Moore, Owens, and Ramsey.

Noes: None

Abstain: None

Absent: Chang, Mizell

End of Closed Session

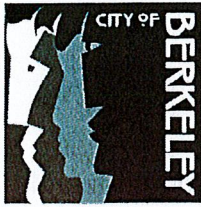
15. ANNOUNCEMENT OF CLOSED SESSION ACTION

The actions to postpone Item #12, close Complaint #9, and accept the Director's findings and recommendations in Complaint #4 were announced.

16. ADJOURNMENT

Motion to adjourn the meeting.

Moved/Second (Leftwich/Calavita) **By general consent, the meeting was adjourned at 10:17 p.m.**



OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

DRAFT

POLICE ACCOUNTABILITY BOARD
SPECIAL MEETING
MINUTES
(draft)

Wednesday, November 17, 2021, 7:00 P.M.

No physical location; meeting held exclusively through videoconference and teleconference.

1. CALL TO ORDER & ROLL CALL BY VICE-CHAIR CHANG AT 7:02 P.M.

Present: Board Member Michael Chang (Vice-Chair)
Board Member Kitty Calavita
Board Member Regina Harris
Board Member Juliet Leftwich
Board Member Deborah Levine
Board Member Nathan Mizell
Board Member John Moore
Board Member Cheryl Owens
Alternate Board Member Elisa Batista

Absent: Board Members Ismail Ramsey (Chair)

ODPA Staff: Katherine J. Lee, Interim Director of Police Accountability

BPD Staff: Sgt. Veronica Rodrigues, Ofc. Alex McDougall, Ofc. Matthew Valle (BPA)

2. APPROVAL OF AGENDA

Motion to approve the agenda.
Moved/Second (Leftwich/Calavita) **Motion Carried by general consent**

3. PUBLIC COMMENT

No speakers.

4. NEW BUSINESS (discussion and action)

a. Training: Ralph M. Brown Act

Presentation made and questions answered by Deputy City Attorney Sam Harvey.

b. Training: Principled Policing

Presentation made and questions answered by Sgt. Veronica Rodrigues and Ofc. Alex McDougall.

5. PUBLIC COMMENT

1 speaker.

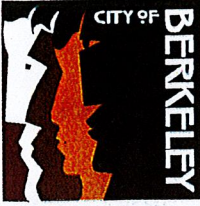
6. ADJOURNMENT

Motion to adjourn the meeting.

Moved/Second (Harris/Leftwich) **By general consent, the meeting was adjourned at 10:23 p.m.**

**POLICE ACCOUNTABILITY BOARD
SUBCOMMITTEES LIST
11-18-21**

Subcommittee	Board Members	Chair	BPD Reps
Regulations Formed 7-7-21	Calavita Chang Leftwich Owens <u>Public:</u> Kitt Saginor	Chang	Lt. Dan Montgomery
Director Search Formed 8-4-21	Levine Mizell Moore <u>Public:</u> Rivka Polatnick Marc Staton	<u>Co-chairs</u> Levine Moore	
Fair & Impartial Policing Implementation Formed 8-4-21	Calavita Moore Owens Ramsey <u>Public:</u> George Lippman Elliot Halpern Jamie Crook	Calavita	Sgt. Peter Lee
Policy Complaint #7 Formed 11-10-21	Harris Levine		



VIA EMAIL ONLY TO JLOUIS@CITYOFBERKELEY.INFO

October 29, 2021

Interim Police Chief Jennifer Louis
City of Berkeley
2100 Martin Luther King, Jr. Way
Berkeley, CA 94704

Re: Fair & Impartial Policing Implementation

Dear Interim Chief Louis,

Police Accountability Board Members followed closely your October 19, 2021 report to City Council, which included a brief overview of the BPD's progress in implementing the directives from City Council on Fair and Impartial Policing (FIP).

As you know, the City Council, in passing the FIP recommendations on February 23, 2021, established that the Police Accountability Board (PAB) would be responsible for the "long-term monitoring and assessment" of the FIP implementation. The PAB sincerely hopes that this will be a collaborative effort, with the Department and the PAB and its Implementation Subcommittee—chaired by Board Member Calavita—engaging in productive dialogue that moves implementation forward in a transparent and efficient way.

To that end, the PAB invites you to a PAB meeting to provide us with a detailed update on implementation progress. We would especially appreciate a focus on the following:

- The Early Intervention System (EIS), including specifics on the policy language, how it will be operationalized, and expected completion date
- Revised search consent forms, including draft language and expected completion date
- Business cards to be distributed after each officer/civilian encounter, including (for now) stickers with information about filing a complaint with the PAB and/or making an officer commendation

The PAB is eager to collaborate with the BPD on all FIP items. The EIS seems especially central to our mutual concerns for policing that is fair and impartial. Board Members have expressed a strong desire to be involved upfront as the new EIS system and policy language is developed. With the transition to Lexipol policy language and on other issues, it is enormously useful to collaborate as things develop as opposed to waiting until a final product is in place. We sincerely hope to develop collegial

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approaches. A first step in that direction is to have a full progress report and subsequently a series of meetings with you or your delegates and the Board and its Subcommittee.

While we understand that it is unrealistic to set hard and fast timelines, we would hope that through collaboration, the EIS might be up and running early in the new year. The search consent forms and business cards (which I informally understand have already been developed) would seem more straightforward.

For now, then, two requests. First, we ask that you attend a PAB meeting to give us a detailed report on FIP implementation progress. Related, we ask that you share with the PAB and its Subcommittee any early policy drafts for the EIS. We are looking forward to fruitful collaboration on all fronts.

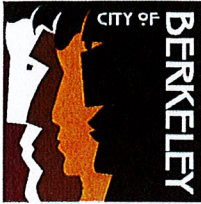
The members of the Police Accountability Board voted unanimously at its October 27, 2021 meeting to send this letter to you.

Sincerely,



Izzy Ramsey
Chairperson, Police Accountability Board

cc: Police Accountability Board Members



OFFICE OF THE DIRECTOR
OF POLICE ACCOUNTABILITY

December 2, 2021

To: Police Accountability Board
From: Katherine J. Lee, ^{KL}Interim Director of Police Accountability
Re: Proposed regular meeting schedule for 2022 for discussion at
December 8, 2021 meeting

Charter Section 125 (13)(a) requires the Board to establish a regular meeting schedule consisting of at least 18 meetings per calendar year.

The attached proposed meeting schedule for 2022 contemplates 20 meetings for next calendar year. It largely adheres to the second and fourth Wednesday schedule that Board members favored for the last half of this year, as well as an August break and one meeting each in November and December.

Also attached is a memorandum from the City Clerk regarding a Council policy to avoid scheduling meetings of City Legislative Bodies on religious holidays with work restrictions. As two of the proposed meeting dates fall on the provided list of religious holidays, possible alternate dates should be discussed at your December 8 meeting.

Attachments:

1. Proposed PAB 2022 regular meeting schedule
2. Nov. 19, 2021 memo from City Clerk re: City Policy Regarding Scheduling of Meetings on Significant Religious Holidays, with attachments

Proposed Police Accountability Board 2022 Regular Meeting Schedule

JANUARY						
S	M	T	W	T	F	S
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FEBRUARY						
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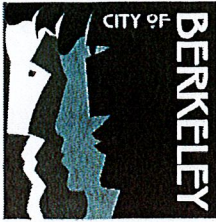
DECEMBER						
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PAB Meeting

note April 27, Oct. 26 religious holiday conflict

City Council Meeting

City Holiday



City Clerk Department

November 19, 2021

To: Commission Secretaries

From: Mark Numainville, City Clerk

Subject: City Policy Regarding Scheduling of Meetings on Significant Religious Holidays

On October 12, 2021, the City Council adopted Resolution No. 70,066-N.S., creating a policy to avoid scheduling meetings of City Legislative Bodies on religious holidays with work restrictions. The Legislative Bodies impacted by this policy include the City Council, Commissions and Boards, Task Forces, and Council Policy Committees.

The City Clerk Department has compiled a list of religious holidays and dates for 2022. Commissions, Boards and task Forces should avoid scheduling meetings on any of the dates in the attached list.

Attachments:

1. List of Religious/Cultural Observances
2. Resolution No. 70,066-N.S.

City Policy Regarding the Scheduling of City Meetings on All Significant Religious Holidays

Pursuant to Resolution No. 70,066-N.S., it is the policy of the City to avoid scheduling meetings of City Legislative Bodies (City Council, Commissions and Boards, Council Policy Committees, Task Forces) on religious holidays that incorporate significant work restrictions.

City legislative bodies must avoid scheduling meetings on the religious holidays listed below.

Religion	Holiday	Date	2022 Date
Christian	Good Friday	Varies (March or April)	4/15/22
Christian	Easter Sunday	Varies (March or April)	4/17/22
Christian	Christmas	December 25	12/25/22
Jewish	Rosh Hashanah	Varies (Sept. or Oct.)	9/25/22-9/27/22
Jewish	Yom Kippur	Varies (Sept. or Oct.)	10/4/22-10/5/22
Jewish	Sukkot - first and last day	Varies (Sept. or Oct.)	10/9/22, 10/16/22
Jewish	Shmini Atzeret	Varies (Sept. or Oct.)	10/16/22-10/18/22
Jewish	Simchat Torah	Varies (Sept. or Oct.)	10/17/22-10/18/22
Jewish	Chanukah (1 st night)	Varies (Nov. or Dec.)	12/18/22
Jewish	Passover (Nights 1, 2, 7, 8)	Varies (March or April)	4/15,4/16,4/22,4/23
Jewish	Shavuot	Varies (May or June)	6/4/22-6/6/22
Jewish	Shabbat	Weekly	Friday sunset to Saturday sunset
Jewish*	Purim	Varies (February or March)	3/16/22-3/17/22
Jewish*	Tish'a B'Av	Varies (July or August)	8/5/22-8/6/22
Jewish*	Yom HaShoah	Varies (April or May)	4/27/22-4/28/22
Buddhist	Vesak	Varies (April or May)	5/6/22
Hindu	Diwali	Varies (Oct. or Nov.)	10/24/22
Hindu	Dussera	Varies (Oct.)	10/5/2022
Hindu	Holi	Varies (March)	3/17-3/18
Hindu	Makar Sankranti	Varies (January or February)	1/14/2022
Islam	Eid al-Fitr	Varies	5/2/22-5/3/22
Islam	Eid al-Adha	Varies	7/9/22-7/10/22
Shinto	New Year	January 1-3	1/1/22-1/3/22
Shinto	Obon Ceremony	August 13-15	8/13/22-8/15/22
Baha'i Faith	Birth of Baja'u'llah	Varies	10/26/22-10/27/22
Baha'i Faith	Birth of Bab	Varies	10/25/22-10/26/22
Cultural	Chinese New Year (Day 1-7)	Varies (Jan. 21 – Feb. 20)	2/1/22-2/15/22
Cultural	Kwanzaa	Dec. 26 – Dec. 31	12/26/22-1/1/23

* No work restriction, but avoid scheduling meetings if possible

RESOLUTION NO. 70,066-N.S.

ESTABLISHING A PRACTICE TO AVOID SCHEDULING CITY MEETINGS ON ALL SIGNIFICANT RELIGIOUS HOLIDAYS

WHEREAS, The City of Berkeley traditionally does not schedule any City related meetings on Christian religious holidays such as Christmas, Easter, and Good Friday where such meetings would conflict with religious services and celebration; and

WHEREAS, there is no formal policy that addresses the scheduling of meetings on other religious holidays that incorporate significant work restrictions such as Rosh Hashana, Yom Kippur, Passover (1st night), Diwali, Chinese New Year, Birth of Baja'u'llah, Kwanzaa, Gantan-sai, Eid al-Fitr and Eid al-Adha; and

WHEREAS, while consideration has been taken to avoid scheduling meetings on such dates, it is not a consistent practice and, as such, conflicts have occurred; and

WHEREAS, ensuring that a policy is in place to avoid scheduling on religious holidays that incorporate significant work restrictions will ensure that all beliefs and people are treated equally.

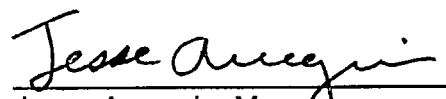
NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that it will be the policy of the City to avoid scheduling meetings of City Legislative Bodies (City Council, Commissions and Boards, Council Policy Committees, Task Forces) on religious holidays that incorporate significant work restrictions and such days shall be identified through consultation with community religious leaders.

The foregoing Resolution was adopted by the Berkeley City Council on October 12, 2021 by the following vote:


Ayes: Bartlett, Droste, Hahn, Harrison, Kesarwani, Robinson, Taplin, Wengraf, and Arreguin.

Noes: None.

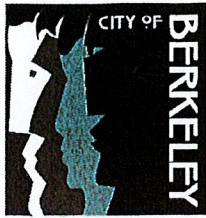
Absent: None.



Jesse Arreguin, Mayor

Attest: 

Mark Numainville, City Clerk



Office of the City Manager

November 10, 2021

To: Honorable Mayor, City Council Members and
The Police Accountability Board

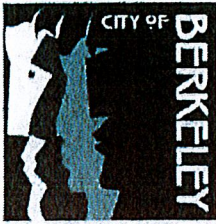
From: *DWR* Dee Williams-Ridley, City Manager

Subject: **USE OF PEPPER SPRAY INCIDENT**

Attached please find the Use of Pepper Spray report that occurred on November 4, 2021. The authorization for these reports comes from the City of Berkeley Council action taken September 16, 1997, directing that any use of "Oleoresin Capsicum" OC spray be reported to City Council and the Police Review Commission via the Police Department's Chain of Command as a public record within seven (7) days of its use.

Attachment: Use of Pepper Spray Report 21-51179


cc: Paul Buddenhagen, Deputy City Manager
LaTanya Bellow, Interim Deputy City Manager
Mark Numainville, City Clerk
Jenny Wong, City Auditor
Jennifer Louis, Interim Chief of Police
Katherine J. Lee, Interim Director of Police Accountability
Matthai Chakko, Public Information Officer



Berkeley Police Department

November 10, 2021

To: Dee Williams-Ridley, City Manager

From: Jennifer Louis, Interim Chief of Police 

Subject: **USE OF PEPPER SPRAY INCIDENT**

Attached please find the Use of Pepper Spray report that occurred on November 4, 2021. The authorization for these reports comes from the City of Berkeley Council action taken September 16, 1997, directing that any use of "Oleoresin Capsicum" OC spray be reported to City Council and the Police Review Commission via the Police Department's Chain of Command as a public record within seven (7) days of its use.

Attachment: Use of Pepper Spray Report Case 21-51179

Summary and justification of the Actions of Officer(s) Involved:

When I advised VALDEZ to let go of her dog's leash, VALDEZ refused and started yelling loudly. VALDEZ became angry and could not calm down. Due to VALDEZ's behavior, her dog became angry and aggressive. VALDEZ's dog started to lunge forward towards me while barking and biting. I believed there was a high likelihood of being bit as VALDEZ's dog had already bit another person causing puncture wounds. I pepper sprayed VALDEZ's dog to take its attention away from me and other BPD officers. I also believed by pepper spraying VALDEZ's dog, it would help control him.

Please print and route through Chain of Command to the Office of the Chief.

<u>JLS-19</u>	Duty Supervisor
<u>ERL-11</u>	Watch Commander
<u>MO C-2</u>	Operations Captain
<u>Jac-1</u>	Chief of Police

Lee, Katherine

From: Gan, Yvette
Sent: Wednesday, November 10, 2021 1:59 PM
To: Lee, Katherine
Cc: Martinez, Maritza; Norris, Byron
Subject: FW: Use of Pepper Spray Incident
Attachments: Use of Pepper Spray Incident 111021.pdf

Hello:

Attached is a memo about the Use of Pepper Spray. Would you be so kind as to forward the memo to the Police Accountability Board members?

Thank you.

Yvette

From: Gan, Yvette On Behalf Of Williams-Ridley, Dee
Sent: Wednesday, November 10, 2021 1:58 PM
To: Aguilar-Canabal, Diego <DAguilarCanabal@cityofberkeley.info>; Alpert, Solomon <SAlpert@cityofberkeley.info>; Arreguin, Jesse L. <JArreguin@cityofberkeley.info>; Bartlett, Ben <BBartlett@cityofberkeley.info>; Chang, James <jchang@cityofberkeley.info>; Chen, Angie <AChen@cityofberkeley.info>; Droste, Lori <ldroste@cityofberkeley.info>; Elgstrand, Stefan <SElgstrand@cityofberkeley.info>; Genolio, Joe <JGenolio@cityofberkeley.info>; Gerstein, Beth <BGerstein@cityofberkeley.info>; Hahn, Sophie <SHahn@cityofberkeley.info>; Harechmak, JT <JTHarechmak@cityofberkeley.info>; Harrison, Kate <KHarrison@cityofberkeley.info>; Kelley, Andy <AKelley@cityofberkeley.info>; Kesarwani, Rashi <RKesarwani@cityofberkeley.info>; Ly, Katie <KLy@cityofberkeley.info>; McCormick, Jacquelyn <JMcCormick@cityofberkeley.info>; McWhorter, Laurie <LMcWhorter@cityofberkeley.info>; Naso, Christopher <CNaso@cityofberkeley.info>; Norris, Brandon <BrNorris@cityofberkeley.info>; Panzer, Eric <erpanzer@cityofberkeley.info>; Robinson, Rigel <RRobinson@cityofberkeley.info>; Skjerpings, Lars <LSkjerpings@cityofberkeley.info>; Taplin, Terry <ttaplin@cityofberkeley.info>; Trachtenberg, Tano <TTrachtenberg@cityofberkeley.info>; Wengraf, Susan <SWengraf@cityofberkeley.info>
Cc: Bellow, LaTanya <LBellow@cityofberkeley.info>; Buddenhagen, Paul <PBuddenhagen@cityofberkeley.info>; Chakko, Matthai <MChakko@cityofberkeley.info>; Numainville, Mark L. <MNumainville@cityofberkeley.info>; Williams-Ridley, Dee <DWilliams-Ridley@cityofberkeley.info>; Wong, Jenny <JWong@cityofberkeley.info>; Lee, Katherine <KLee@cityofberkeley.info>
Subject: Use of Pepper Spray Incident

Please see the attached memo from Dee Williams-Ridley regarding a Use of Pepper Spray incident on Nov. 4, 2021. Thank you.

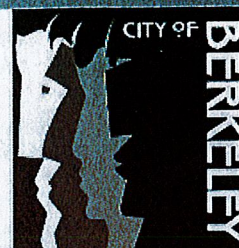
Yvette Gan
Secretary to the City Manager
City of Berkeley
2180 Milvia Street, 5th floor
Berkeley, CA 94704
Tel: 510-981-7004

Fax: 510-981-7099

Email: yvg2@cityofberkeley.info



Berkeley Police News



November 10, 2021

Berkeley City Council Approves BPD's use of OTS Grant

Last night the Berkeley City Council approved the Berkeley Police Department's (BPD) use of a \$180,000 grant awarded to them from the [California Office of Traffic Safety \(OTS\)](#). The grant funds will enable BPD to field additional officers to help prevent deaths and injuries on Berkeley roadways, attend DUI related training and provide traffic safety presentations to the community.

"Unsafe driving behavior continues to be the primary cause of collisions in the City of Berkeley. We are committed to using equitable, data driven intelligence to provide both education and enforcement to support the City's goal of eliminating fatal and serious collisions on Berkeley roadways." ([Vision Zero Program - City of Berkeley, CA](#))—Lieutenant Jen Tate.

The one-year grant is for the 2022 federal fiscal year, which runs from Oct. 1, 2021 to Sept. 30, 2022.

The grant will fund a variety of traffic safety programs, including:

- DUI checkpoints and patrols specifically focused on suspected impaired drivers.
- Enforcement operations focused on suspected distracted drivers in violation of California's hands-free cell phone law.
- Bicycle and pedestrian safety enforcement operations focused on driver behaviors that put vulnerable road users at risk.
- Enforcement operations focused on top violations that cause crashes: speeding, failure to yield, stop sign and/or red-light running, and improper turning or lane changes.
- Community education presentations on traffic safety issues such as distracted driving, DUI, speeding, and bicycle and pedestrian safety.
- Collaborative enforcement efforts with neighboring agencies.
- Officer training and/or recertification: Standard Field Sobriety Test (SFST), Advanced Roadside Impaired Driving Enforcement (ARIDE) and Drug Recognition Expert (DRE).

"Through these education and enforcement efforts, we hope to correct bad driving behavior and ensure the safety of all those who walk, bike and motor within the City of Berkeley."

Funding for this program was provided by a grant from the [California Office of Traffic Safety](#), through the [National Highway Traffic Safety Administration](#).



Follow Berkeley Police news via email, Twitter or Nixle. For emergencies, dial 9-1-1 (510-981-5911).

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<https://www.sfchronicle.com/bayarea/article/Police-killings-are-drastically-undercounted-16583750.php#photo-21660645>

Police killings are drastically undercounted, study says. What role do California sheriffs play?

Shwanika Narayan

Nov. 2, 2021 Updated: Nov. 6, 2021 2:22 p.m.

Kayla Moore lost consciousness during a Feb. 12, 2013, struggle with Berkeley police inside her apartment and never woke up. The 41-year-old transgender woman's death was ruled an accident, caused by acute drug intoxication, obesity and cardiovascular disease.

Something similar happened to Rakeem Rucks, who became unresponsive while Antioch police officers pinned the 34-year-old to the ground outside of an apartment complex in June 2015. The official cause of his death was a heart attack probably brought on by methamphetamine use.

Roy Nelson Jr., 42, complained he couldn't breathe when Hayward police officers had him belly-down on the street in December 2015. He died the same night. His death was attributed to physical exertion and methamphetamine use.

In all three cases, coroners employed by Bay Area sheriffs ruled the deaths to be the result of something other than police violence, even when family lawsuits and outside autopsy reports claimed otherwise. A study released last month indicates they're part of a broader national trend in which police killings are drastically undercounted in the U.S., renewing questions about whether law enforcement information can be trusted.

In California, the questions extend to the outside role that elected sheriffs play in determining the cause of violent or unexpected deaths. In 48 out of the state's 58 counties — and six out of nine Bay Area counties — sheriffs also hold the title of coroner.

Trust the numbers?

According to figures collected by the California Department of Justice, 936 people died in law enforcement custody last year, an 18% increase from 2019 and the most

in at least a decade. Of the 180 deaths that occurred during arrest, 92 were determined to be justifiable homicides, 23 to be accidents and 12 to be suicides. Five were from other causes, and 48 are still pending investigation.

But a Justice Department spokesperson noted that the above statistics are self-reported by law enforcement agencies and probably incomplete. “With regards to use of force incident reporting, it’s important to note that the dataset is narrowly defined and does not represent the totality of use of force incidents that occur in California,” the spokesperson wrote in an email.

A recent study in the Lancet, a prominent medical journal, went further.

In the study, researchers with the University of Washington compared death certificate information from the federal government’s National Vital Statistics System against data on deadly police interactions from three open-sourced trackers: Fatal Encounters, Mapping Police Violence and the Counted, a project by the Guardian.

The researchers found a vast discrepancy in the official and unofficial counts: Of the 30,800 deaths they estimated to result from police violence from 1980 to 2018, approximately 17,000 — or 55.2% — were not reported by the federal government.

“The causes of underreporting vary,” Eve Wool, the study’s lead author and a researcher at the university’s Institute for Health Metrics and Evaluation, said during a Sept. 28 video news conference. “Several are that medical examiners and coroners are often embedded within police departments, leading to conflicts of interest as they’re expected to report on the violence of the departments they may be embedded within.”

The California State Sheriffs’ Association didn’t respond to a request for comment Monday. Alameda County sheriff’s Sgt. Ray Kelly, whose department investigated the Moore and Nelson cases, said the Coroner’s Bureau operates independently of “the sheriff’s side of the house.”

“We rely on professionals who work in that department to use their expertise,” Kelly added. “We don’t get involved.”

Controversy engulfed the San Joaquin Sheriff's Office in late 2017, when its chief forensic pathologist, Bennet Omalu, resigned after publicly accusing Sheriff-Coroner Steve Moore of interfering with his death investigations to protect deputies. The California Legislature responded by passing a bill that would have required larger counties to separate the coroner from the sheriff, but then-Gov. Jerry Brown vetoed it in 2018.

In most California and Bay Area counties — including Alameda, Contra Costa, Marin, Napa, Solano and Sonoma — the sheriff and coroner remain shared positions. In Contra Costa County, for instance, the Sheriff's Office runs what are called coroner's inquests any time there's a fatal incident involving law enforcement personnel.

In the case of Angelo Quinto, a 30-year-old Navy veteran who died after being restrained by Antioch police officers in his home last December, the jury concluded that Quinto's death was an accident brought on by "excited delirium," a term that isn't recognized by the American Medical Association and is often applied to fatal police encounters involving people of color.

Quinto's family and its attorneys contend that police caused Quinto's death. The Fatal Encounters website on which the University of Washington researchers partially relied lists Quinto's cause of death as "Asphyxiated/Restrained."

Black Americans were 3.5 times more likely to die as a result of a police altercation than white Americans, researchers found. Latinos and Native Americans also experienced higher rates of fatal police violence than white people. Kayla Moore, Rucks and Nelson were Black, while Quinto was Filipino American. All four were experiencing mental health episodes when they or others called 911 for help, according to civil filings.

"It's always Black, brown and poor people who are most impacted by police violence," said Melissa Nold, a Vallejo civil rights attorney who helped represent the families of Moore, Rucks and Nelson at a previous law firm. "And folks with mental health issues are also often the most vulnerable."

Civil lawsuits are perhaps the most common recourse for bereaved families who don't accept the official government record.

Nelson's family settled with the city of Hayward for \$1 million in October 2019. Rucks' family settled with the Antioch Police Department for \$475,000 in March 2020.

If it weren't for her race, Moore's death would not have been counted in the University of Washington study, which did not have victim data for transgender people and Asian Americans.

In February 2013, Berkeley police were called to Moore's apartment by a roommate who said he had been kicked out of their residence and that Moore was behaving erratically.

Two officers arrived and tried to handcuff her. They said she resisted and that it took six officers to subdue her. Moore stopped breathing and could not be revived. Her death was ruled an accident.

Her family members said Berkeley police knew of Moore's schizophrenia and mental health history, having dealt with her before. They filed a lawsuit in 2014 alleging excessive force and citing a private physician's report, which determined that pressure on Moore's chest contributed to her death.

After U.S. District Judge Charles Breyer dismissed the family's lawsuit in 2018, the Ninth Circuit Court of Appeals in San Francisco upheld that ruling in January 2020.

In an emailed statement to The Chronicle, the city of Berkeley called Moore's death "a tragedy," but suggested it had undergone a robust legal process. "Her death was investigated by Homicide investigators, the District Attorney's Office and the Coroner's office, and there were no findings of criminal conduct in the death," the statement read.

One of the people who helped raise Moore doesn't agree.

"Police officers didn't just accidentally participate in the death of my child. They murdered my child," said Elysse Moore, Moore's stepmother. "Parents are not supposed to bury their children. It's been a nightmare."

To Moore's sister, it's also the predictable result of a system that doesn't count every lost life equally.

<https://www.propublica.org/article/police-watchdog-calls-for-full-access-to-body-cam-footage-the-nypd-says-no>

Police Watchdog Calls for Full Access to Body Cam Footage. The NYPD Says No.

The inspector general for the NYPD concludes, as ProPublica has detailed, that the police aren't giving civilian investigators full access to body-worn camera footage.

by Eric Umansky Nov. 8, 1 p.m. EST

ProPublica is a nonprofit newsroom that investigates abuses of power. Sign up to receive our biggest stories as soon as they're published.

The New York Police Department is undermining investigations into police abuse by refusing to give full access to body-worn camera footage, according to a new report by a city watchdog agency.

The NYPD began rolling out body-worn cameras to officers in 2017, nearly four years after a federal judge found that the department's stop-and-frisk tactics were unconstitutional and ordered the NYPD to begin piloting the use of body cams.

The cameras are now standard issue in many jurisdictions across the country, seen as a way to provide more objective accounts of police actions and rely less on the recollections of officers or anyone else.

But, as ProPublica has detailed, the NYPD has often refused to share footage with the Civilian Complaint Review Board, the city agency tasked with investigating allegations of excessive force and other misconduct.

In some instances, the NYPD has told CCRB investigators no footage of an incident exists, only for the CCRB to later learn that it does. For example, during one investigation of an incident for which the NYPD said there was no footage, an officer later told investigators that she had her camera on.

Other times, the NYPD has acknowledged footage exists but refused to turn it over, citing privacy issues. In one case, an officer slammed a young man into the pavement, sending him to the hospital with a brain bleed. Seven body cameras worn by officers captured parts of the incident. But the NYPD withheld almost all the footage from CCRB investigators, on the grounds that a minor's face could be seen in some of it.

The new report, by the Inspector General for the NYPD, which is not part of the department, recommends a straightforward solution: Investigators at the CCRB should have direct access to body-worn camera footage, so they don't have to rely on the NYPD's discretion. Police oversight agencies in a number of other cities already have such access.

“Effective and independent police review requires direct access to body-worn camera footage,” the inspector general, Philip Eure, said in a statement. “Oversight agencies cannot hold officers accountable for misconduct and foster greater trust between communities and law enforcement if the police withhold, redact, or delay the production of critical evidence.”

In its response, the NYPD rejected the call to give CCRB investigators full access.

The department emphasized that backlogs of requests for footage — an issue ProPublica has highlighted — have been addressed. The NYPD argued that the report was based on outdated information “about past practices that are no longer applicable.”

But the response gives the false impression that investigators already have the access they are seeking.

In referring to the call for direct access to body-worn camera, or BWC, footage, the NYPD stated: “The CCRB already has access to BWC footage detailed in this recommendation.”

Currently, CCRB investigators have to go through a request process that depends on the NYPD’s cooperation.

“Direct access has, and continues to be, one of the top needs of the CCRB,” the agency’s chair, the Rev. Frederick Davie, said in a statement to ProPublica.

An analysis last year by the CCRB found that investigators got to the bottom of cases — either substantiating allegations or clearing officers of charges — far more often when they were able to review body cam footage.

Inspecting the NYPD “Puzzle Palace”

Two years ago, the NYPD and CCRB arrived at what was supposed to be a solution to the dispute over access to footage. Under the agreement, a CCRB investigator can observe NYPD staff as they search the system. But even then, the NYPD has limited what CCRB investigators can do with what they see. For example, if an investigator sees abuse unrelated to the case in question, the CCRB can’t start an investigation into it.

The inspector general said social distancing and work-from-home measures instituted during the pandemic have hampered the protocol, but that even when fully implemented, the process would “waste limited City time and resources attempting to perfect an imperfect solution.”

As ProPublica has detailed, the NYPD has also often not cooperated with the inspector general’s office itself. A footnote to the new report contained further evidence of that. It said the office sought to interview NYPD officials about body-worn cameras but were

rebuffed: "NYPD opted against making any representatives available for a meeting (or meetings)."

Filed under —

- Criminal Justice



Eric Umansky

Eric Umansky is a deputy managing editor of ProPublica.

- eric.umansky@propublica.org
- [@ericuman](#)

Re-Fund the Police'? Why It Might Not Reduce Crime.

Other anti-crime measures might be more effective, experts say, and avoid the downsides of policing.

By Shaila Dewan

Published Nov. 8, 2021 Updated Nov. 11, 2021

In liberal Portland, Ore., which is facing its most violent year on record, the mayor announced a plan on Wednesday to put 200 more police officers on the streets. His announcement came a day after voters in Atlanta and in Seattle signaled their support for mayoral candidates who promised not to roll back the police force, but to expand it. In Maryland last month, Gov. Larry Hogan announced \$150 million to “Re-fund the police.”

With shootings and homicides surging in many cities, calls to redirect money to policing are rising. But evidence that hiring more officers is the best way to reduce crime is mixed: Beefing up a police force can help, but the effects are modest and far from certain. Those who study the question say any declines in crime have to be weighed against the downsides of adding more police officers, including negative interactions with the public, police violence and further erosion of public trust.

And there is a bigger unknown: how police hiring compares with other anti-crime measures, such as providing more summer jobs or drug treatment programs, or even keeping the same number of officers but deploying them more strategically.

For decades, scholars have acknowledged that local crime rates cannot be predicted by officer strength and police budgets. Sometimes a boost for policing is followed by a drop in crime; sometimes it isn't.

History shows that homicides fell after more officers were hired 54 percent of the time, according to Aaron Chalfin, a criminologist at the University of Pennsylvania who has studied ways of driving down crime.

“Crime goes up and down for a million reasons that are completely independent of the police,” Dr. Chalfin said. “But we know, on average, if you look across many cities for many years, there is an effect.”

While crime rates and officers per capita vary widely from city to city, scholars have begun to try to get an overall picture by using data on federal policing grants that were

established in 1994. In a forthcoming paper, Dr. Chalfin and his co-authors found that one additional officer reduced between .06 and 0.1 homicides per year — in other words, it takes 10 to 17 new officers to save a life.

The gains were not uniform. Overall, more Black lives were saved than white lives when police officers were added, but in Southern cities with larger Black populations the homicide rate did not budge, according to an early draft of the paper. And more officers made arrests for low-level offenses like alcohol-related infractions, which are not typically seen as contributing to public safety. More police officers may also mean that cities incur the cost of more police violence, more legal settlements and more protests.

With more national focus on those drawbacks, not all voters are enthusiastic about beefing up police forces, even in cities with sharply increasing homicide numbers. Last week, residents of Austin, Texas, rejected by a wide margin a ballot measure that would have required the city to hire hundreds more officers.

Opponents pointed out that while Austin had a record high number of homicides, cities with far more police officers per capita, including Atlanta, Chicago and Milwaukee, had experienced greater increases in their homicide rates, and cities with fewer officers per capita, including Raleigh, N.C., and El Paso, had seen homicides decline.

“If I read this margin of victory correctly, I think people understand that there is going to be crime, but are more willing to solve the question of why these things are happening as opposed to just responding to them when they do,” said Chas Moore, executive director of the Austin Justice Coalition, which opposed the measure.

Because the causes of crime vary from place to place, it can be extraordinarily difficult to disentangle the benefits of hiring more officers in any one city. After a rise in gun violence in Chicago in 2016, for example, the city announced that it would hire almost 1,000 additional officers, a number officials said was justified by a “top to bottom” staffing analysis that watchdog groups have not been able to obtain. Shootings began to fall before those officers were recruited and trained.

“As long as Chicago has a cold winter, crime is going to drop,” said Tracy Siska, the executive director of the Chicago Justice Project, adding that gun violence in 2016 was abnormally high. “So you can’t say that crime went down because they hired all these new officers — no, no, no.”

Chicago’s crime numbers did fall in 2019, the year that the force reached its peak of 13,353 officers, according to data from the city’s Office of Inspector General. But the next year, the coronavirus pandemic and an increase in gun purchases appeared to play a much larger role, making it hard once again to isolate the effects of the police force size. Overall, crime plummeted while the number of shootings surged.

There is also the question — left largely unanswered by existing studies — of how the added officers are being deployed.

“Does policing the hot spot have the same effect depending on what they do — stopping everyone, targeting high-risk offenders, or just standing on a street corner with your arms folded looking mean?” asked Jeffrey A. Fagan, an expert on policing at Columbia Law School, speaking of the practice of flooding high-crime areas with officers. The answer matters, he said, because “everybody agrees you get into fewer problems with the public if you minimize the police footprint.”

Even crime statistics themselves have limitations — they are collected by the police, and the police decide what counts as a crime, said Tamara K. Nopper, a sociologist at Rhode Island College and the editor of “We Do This ’Til We Free Us,” a book on abolitionist organizing by Mariame Kaba.

The numbers that get the most attention are the so-called index crimes — murder, rape, robbery, aggravated assault, burglary, larceny, car theft and arson. They represent a narrow definition of public safety, and advocates of shrinking or abolishing the police have taken to pointing out that they do not include civil rights violations, violence perpetrated by the police and correction officers, or even failures by those in uniform to take precautions against spreading the coronavirus.

“In the end, crime data is always a tool of police propaganda,” Dr. Nopper said. “If crime is low, the police are doing their jobs. If crime is high, we need to give more money to the police. The police always win.”

Perhaps because crime rates are so hard to explain, they are easy to exploit. The spike in gun violence has not only prompted calls to expand police departments, it has given the police an opening to blame crime on policies they do not like, often with little evidence.

Dermot F. Shea, the New York City police commissioner, repeatedly used his bully pulpit to pin the city’s increase in shootings on bail reform, which allows people to avoid being locked up before they have been convicted. But when he was confronted with data to the contrary at a hearing in Albany last month, he was forced to backpedal.

Perhaps the biggest drawback of the available evidence on policing is that it does not compare the benefit of more officers on the street with the benefit of expanding other measures that have been shown to reduce crime: drug treatment, mental health crisis responders, or summer jobs for young people.

In a recent survey of criminal justice experts, about two-thirds agreed that increasing police budgets would improve public safety. But many more of them — 85 percent — said that increasing spending on housing, health and education would do so.

Nor do they measure the comparative effect of asking the police to absent themselves entirely, as in a five-day experiment in a Brooklyn neighborhood last year that reportedly saw 911 calls drop nearly to zero.

In New York City, a randomized trial of street lighting reduced outdoor, nighttime index crimes by 36 percent. In Philadelphia, cleaning up vacant lots corresponded to a 29 percent reduction in gun violence. A number of studies have documented the effectiveness of violence interruption programs run by “credible messengers” who are respected in their communities.

In the longer term, Medicaid expansion, access to drug treatment and mental health care, and even a guaranteed basic income have also been found to reduce crime — perhaps with fewer downsides than policing.

“I think when one is talking about what’s an alternative to just adding police, well, putting some serious investment into the kind of program for at-risk youth that really gives them a concrete possibility for a real job,” said Elliott Currie, a criminologist at the University of California, Irvine. “That’s where you really get the bang for the buck.”

Shaila Dewan is a national reporter and editor covering criminal justice issues including prosecution, policing and incarceration. [@shailadewan](#)

GUEST ESSAY

Black Voters Want Better Policing, Not Posturing by Progressives

Nov. 9, 2021

By Nekima Levy Armstrong

Ms. Levy Armstrong, a civil rights lawyer, is a founder of the Racial Justice Network and the executive director of the Wayfinder Foundation.

MINNEAPOLIS — This city always prided itself for being a progressive place where everyone could thrive. At least, that was true for white people. Black residents all too often faced persistent racism and inequality — in education, homeownership, income and employment — and in the way the police treated us.

For years, the Minneapolis police have persistently abused Black residents, even children. Several years ago I saw a white officer confront a Black boy who looked to be about 10, grab him by his shirt and slam him against the hood of a police car. I confronted the officer and notified the white police chief at the time. The chief shrugged as if there was nothing he could do.

It took the police murder of George Floyd last year, and an uprising by outraged residents, to finally call attention to the brutality and injustice Black people face every day here and around the country.

Those of us who had long fought for a reckoning over police abuse in Minneapolis expected to see a critical examination of the practices, laws, policies, contractual requirements and spending that undergird policing. We expected a well-thought-out, evidence-based, comprehensive plan to remake our police department.

Instead, what we got was progressive posturing of a kind seen throughout the country and a missed opportunity to bring about real change and racial justice.

This was made plain last week when voters rejected a proposal to replace the Minneapolis Police Department with a new Department of Public Safety. While many white progressives embraced the ballot measure as a sign of progress, many Black residents like me raised concerns that the plan lacked specificity and could reduce public safety in the Black community without increasing police accountability. The city's largest Black neighborhoods voted it down, while support was greater in areas where more white liberals lived.

The measure would have removed from the City Charter a requirement for a minimum number of police officers per resident and enacted “a comprehensive public health approach” to public safety “which *could* include licensed peace officers (police officers), *if necessary*.” (Emphasis added.) It would have also diluted the mayor’s power over the police by having the chief executive and the City Council share control, and would not have required the head of the proposed new department to have any law enforcement experience.

The proposal would have almost certainly created a cascade of unintended consequences that would have harmed Black residents by reducing the number of police officers and the quality of oversight without creating an effective alternative.

Supporters of the measure held no public hearings about it and made little effort to listen to Black residents’ concerns or the opinions of experts. The main issue that many Black people were worried about — the significant increase in gun violence, carjackings and homicides here in the past year or so — was largely ignored.

“Nothing about us without us,” opponents of the measure said, demanding a role in decision-making to make sure that any solution accounted for both Black people’s complex and troubling relationship with the police as well as the disproportionate damage crime and violence do to our communities.

Black voters were especially wary because the City Council members who pushed the measure had done little to rein in the Minneapolis Police Department over the years. The pledge that nine of them made to dismantle the department shortly after Mr. Floyd was killed was more about “looking” progressive to national and international audiences than about transforming policing in ways that most Black residents wanted.

The months of protests around the country and around the world motivated by George Floyd’s killing were intense and electrifying. But the aftermath of those protests helps tell the real story. Far too many progressives took the route of proposing quick fixes, like simply cutting police funding, to address complex, longstanding challenges to policing. As election results in Minneapolis, New York City and elsewhere have shown, that’s not what the majority of Black people want.

What many Black people are demanding is a system that is effective, cost-efficient, nonmilitarized and transparent. We want officials to be accountable for who is hired, how they are disciplined and how they treat us. We want police leaders to admit that racism, white supremacy and misogyny are endemic in many police forces and we want them to commit to radically shift police culture.

For that to happen, there must be a re-examination of the purposes, practices, expenditures and almost unfettered power and discretion of the police. To responsibly reduce spending, elected officials must conduct a real cost/benefit analysis of hiring numerous officers to focus on low-level crime, traffic stops (as in the cases of Daunte Wright and Philando Castile), and small quantities of cannabis, to name a few. This would ultimately mean eliminating or reducing low-level traffic stops, repealing

criminal laws and ordinances that do not improve public safety, and making a commitment to end the war on drugs.

Police departments must establish an early-warning system to flag problem officers and a robust disciplinary system when officers violate the law and people's rights. Instead of continuing to allow police departments to investigate themselves when officers kill people, states should establish a special prosecutor's office to investigate claims and bring charges when appropriate.

Police departments should analyze data to decide where officers are needed most and even where other resources, like mental health professionals, should be assigned. Receiving input and oversight from the public are important components to shifting police culture, as well as listening to Black people and taking our concerns seriously.

Black lives need to be valued not just when unjustly taken by the police, but when we are alive and demanding our right to be heard, to breathe, to live in safe neighborhoods and to enjoy the full benefits of our status as American citizens.

That all takes hard work, not just rhetoric, political posturing, and empty promises.

Nekima Levy Armstrong is a civil rights lawyer, a founder of the Racial Justice Network and the executive director of the Wayfinder Foundation.

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<https://www.propublica.org/article/if-everybodys-white-there-cant-be-any-racial-bias-the-disappearance-of-hispanic-drivers-from-traffic-records>

Credit: Alex Bandoni/ProPublica. Source Images: Kathleen Flynn, special to ProPublica; Jefferson Parish traffic tickets, obtained by WRFK, WWNO and ProPublica

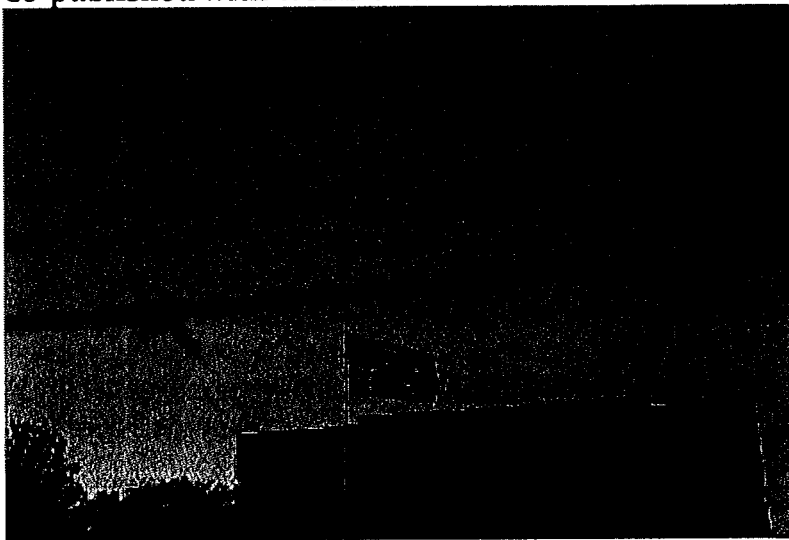
Racial Justice

“If Everybody’s White, There Can’t Be Any Racial Bias”: The Disappearance of Hispanic Drivers From Traffic Records

In Louisiana, law enforcement agencies have been accused of targeting Hispanic drivers in traffic stops and identifying them as white on tickets. Misidentification makes it impossible to track racial bias, experts say.

by **Richard A. Webster** Nov. 22, 7 a.m. EST

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Series: Unwatched

A Louisiana Law Department That Polices Itself

This article was produced for ProPublica’s Local Reporting Network in partnership with WRFK and WWNO. [Sign up for Dispatches](#) to get stories like this one as soon as they are published.

Join reporters from both newsrooms on Thursday, Dec. 2 for “[Shielded](#),” a live virtual event about how law enforcement agencies shield themselves from accountability.

When sheriff's deputies in Jefferson Parish, Louisiana, pulled over Octavio Lopez for an expired inspection tag in 2018, they wrote on his traffic ticket that he is white. Lopez, who is from Nicaragua, is Hispanic and speaks only Spanish, said his wife.

In fact, of the 167 tickets issued by deputies to drivers with the last name Lopez over a nearly six-year span, not one of the motorists was labeled as Hispanic, according to records provided by the Jefferson Parish clerk of court. The same was true of the 252 tickets issued to people with the last name of Rodriguez, 234 named Martinez, 223 with the last name Hernandez and 189 with the surname Garcia.

This kind of misidentification is widespread — and not without harm. Across America, law enforcement agencies have been accused of targeting Hispanic drivers, failing to collect data on those traffic stops, and covering up potential officer misconduct and aggressive immigration enforcement by identifying people as white on tickets.

“If everybody's white, there can't be any racial bias,” Frank Baumgartner, a political science professor at the University of North Carolina of Chapel Hill, told WWNO/WRKF and ProPublica.

Nationally, states have tried to patch this data loophole and tighten controls against racial profiling. In recent years, legislators have passed widely hailed traffic stop data-collection laws in California, Colorado, Illinois, Oregon, Virginia and Washington, D.C. This April, Alabama became the 22nd state to enact similar legislation.

Though Louisiana has had its own data-collection requirement for two decades, it contains a loophole unlike any other state: It exempts law enforcement agencies from collecting and delivering data to the state if they have an anti-racial-profiling policy in place. This has rendered the law essentially worthless, said Josh Parker, a senior staff attorney at the Policing Project, a public safety research nonprofit at the New York University School of Law.

Louisiana State Rep. Royce Duplessis, D-New Orleans, attempted to remove the exemption two years ago, but law enforcement agencies protested. Instead, he was forced to convene a task force to study the issue, which thus far hasn't produced any results, he said.

“They don't want the data because they know what it would reveal,” Duplessis said of law enforcement agencies.

To understand the impact of the state's unique policy, WWNO/WRKF and ProPublica looked at nearly six years of data on traffic citations issued by the New Orleans Police Department in the state's largest city, by the Jefferson Parish Sheriff's Office, and by the state police in Jefferson Parish. The parish was chosen because it has the largest Hispanic population in the state, and because the Sheriff's Office, which is the primary police presence there, has been routinely accused by residents and local activists of harassing and profiling Hispanic people.

The data showed that of the almost 80,000 tickets that the Louisiana State Police handed out in Jefferson Parish over nearly six years, not a single one was issued to a person labeled as Hispanic.

It showed a similar pattern in Jefferson Parish Sheriff's Office: Of the more than 73,000 traffic tickets the office issued between 2015 and September 2020, deputies identified only six of the cited people as Hispanic. As of 2020, Hispanics made up 18% of the parish's population of more than 440,000.

By contrast, the New Orleans Police Department issued about 7,000 tickets to Hispanic people during the same period when the Sheriff's Office claimed it issued only six. That represented 4% of all tickets in New Orleans, where the overall percentage of Hispanic people was 8% in 2020.

Baumgartner said that in many law enforcement agencies, there is "no real rhyme or reason or logic" to how officers classify race. "The white/black distinction is generally well recorded, but the Hispanic one is not. Many Hispanics are wrongly classified as white." The data bears out Baumgartner's point in an alarming way: Unlike Hispanic drivers, Black drivers in Jefferson Parish were cited at a rate 1.5 times what would be expected based on their share of the population.

State Police spokesperson Lt. Melissa Matey, as an explanation for not counting Hispanics, cited the current National Crime Information Center standards, which don't include Hispanic as a race. The Jefferson Parish Sheriff's Office did not respond to emails and phone calls requesting comment.

While Hispanic is an ethnicity, more than 80% of law enforcement agencies use it as a race when collecting information from drivers during traffic stops, according to a sample of 69 departments studied by one expert on racial profiling.

Traffic stops are the most common interaction between citizens and police, and often lead to finding people who have outstanding warrants or who are in the country illegally. As a result, they present the most opportunities for abuse and misconduct, said Jeffrey Fagan, a professor at Columbia Law School.

Failure to track and analyze traffic stop data has the potential to mask racial profiling, he cautioned, especially for the Jefferson Parish sheriff's department, which has long been plagued by charges of racism. A [previous investigation](#) by WWNO/WRKF and ProPublica found that more than 70% of the people Jefferson Parish deputies shot at during the past eight years were Black, more than double the parish's Black population. And 12 of the 16 people who died after being shot or restrained by deputies during that time were Black men.

By failing to scrutinize the actions of its deputies during traffic stops, the Sheriff's Office is "willfully blinding" itself to the fact that it could be engaging in racially biased enforcement of the law, Fagan said. "And they're blinding themselves to the fact that the inaccuracy rises to the level of a potential constitutional violation," he added.

Based in part on the findings of the news organizations' investigation, the American Civil Liberties Union of Louisiana sent a letter last week to the U.S. attorney for the Eastern District of Louisiana requesting a "pattern-or-practice" investigation into the Sheriff's Office, a type of inquiry that typically focuses on departments accused of systemic and institutional misconduct, abuses and corruption.

"For decades, JPSO, under color of law, has systematically violated the rights of Black and Brown people in Jefferson Parish," wrote Alanah Odoms, executive director. "Rather than institute reforms in response to public outrage, the Sheriff's Office prefers to blame the victims and their families. A federal investigation is necessary and appropriate to address this pattern and practice of abuse."

"How Do They Know That They're Doing an Effective Job?"

For years, many in Jefferson Parish's Hispanic community have accused the Sheriff's Office of targeting them for stops with the intention of investigating their immigration status. In one high-profile case from 2017, Atdner Casco, a Honduran native, claimed he was beaten and robbed of more than \$2,000 by deputies working on a task force dedicated to identifying and deporting undocumented people.

Casco filed a lawsuit against the Sheriff's Office, which settled last year for \$50,000. One detective was fired.

Atdner Casco says Jefferson Parish Sheriff deputies beat and robbed him during a traffic stop in 2017, then called Customs and Border Patrol. Credit: Kathleen Flynn, special to ProPublica

Casco's attorneys, Casey Denson and Kenneth Bordes, said the stop and detention of their client — who is now eligible for a U visa, which grants permanent residency to crime victims — was a clear case of racial profiling conducted on behalf of immigration services. They pointed to a statement provided by the supervising detective on the scene that day who said, based on his eight years of experience working narcotics, "Hispanic males" are "usually involved in some type of illegal activity."

Over the last decade, similar allegations of discriminatory practices against Hispanic communities have prompted the Department of Justice to investigate law enforcement agencies in states including North Carolina, Connecticut, Arizona, Louisiana and New York.

In a 2011 report on New Orleans, DOJ investigators noted that "Latinos in New Orleans, especially young Latino males, reported that NOPD officers stop them for unknown reasons or for minor offenses that would not ordinarily merit police attention, and then question them regarding immigration status." (Under a subsequent federal consent decree, the police department implemented a policy against inquiring about immigration status, and it now stops Hispanic people at a rate roughly commensurate with their share of the population.)

Police departments that allegedly engage in racial profiling typically share a common trait: a failure to collect and analyze traffic stop data, said Cheryl Phillips, co-founder of Stanford University's Open Policing Project, which has studied traffic stop data from more than 33 state law enforcement agencies and 57 of the largest city police departments in each state.

Connecticut's East Haven Police Department, for example, was criticized by DOJ investigators for unfairly targeting Latinos in traffic enforcement, but also for "woefully failing to design and implement internal systems of control that would identify, track, and prevent such misconduct."

"How do they know that they're doing an effective job of not racially profiling if they don't actually look at their stops? If they don't actually evaluate their performance?" Phillips said.

According to the Policing Project at NYU, only 22 states and Washington, D.C., require the collection of data on traffic stops. And in those, "many agencies store data in ways that make it difficult — if not impossible — to standardize and analyze, which in turn makes it difficult to identify patterns of behavior and inform changes to policy or practice," the authors wrote in a 2020 report.

This is the case in Louisiana, where efforts to rein in racial profiling have been halting at best. In 2001, the state legislature passed a statute that was supposed to improve data collection in traffic stops to combat biased policing. The statute requires officers to record the race, gender and age of drivers during all traffic stops. The race of the driver is to be based on the "observation and perception of the law enforcement officer," according to the statute. It "shall not be required to be provided by the person stopped."

The data is sent to the Department of Public Safety and Corrections, which is then supposed to send an annual report on to the governor and legislature.

But because of the law's provision that departments that have an anti-racial-profiling policy in place don't have to collect and deliver data, many don't. A report from the Southern Poverty Law Center found that in 2018, about two-thirds of the state's 331 law enforcement agencies had an anti-racial-profiling policy in place, exempting them from reporting data to the state. Of the 109 agencies that had no policy, only two had submitted data over the previous 18 years, according to the report, despite the law.

The statute's original sponsor, then-Rep. Cedric Richmond, who is now a White House senior adviser, originally hoped to create a million-dollar data collection system; when the legislature allocated no money to the effort, the exemption was added. In a 2001 Times-Picayune story, Richmond later said that the goal of the law had never been data collection, but ensuring that law enforcement agencies were discouraging racial profiling through policy.

That same story detailed how law enforcement agencies were scrambling to enact policies specifically to avoid a data collection process they described as "overbearing."

"It's so hard. It's too much paperwork," then-Covington Police Chief Jerry DiFranco said of the data collection requirements.

Parker with the NYU Policing Project described Louisiana's carve-out as "very unusual and unacceptable." Any law enforcement agency can write a policy against racial profiling, he said, but they must be able prove officers are adhering to the policy and that the policy itself is effective in eliminating racial disparities. And that's what the collection and analysis of data accomplishes.

Failure to do so is the "antithesis of democratic policing," Parker said.

A Policy on Paper

On paper, Jefferson Parish's policy against racial profiling is clear: "racial, ethnic, religious affiliation and gender-based profiling ... are totally unacceptable." Motorists are only to be stopped "upon reasonable suspicion that they have committed, are committing or are about to commit an infraction."

The policy specifically addresses the misidentification of race. It states that "the deliberate recording of any misleading information related to the actual or perceived race, ethnicity, gender, religious affiliation or sexual orientation of a person stopped ... is prohibited and a cause for disciplinary action, up to and including dismissal."

But in practice, that policy does not appear to be enforced. The six stops identified as Hispanic represent .008% of all 73,000 stops made in a place where roughly 18% of the population is Hispanic. (The findings for white drivers is more complicated: The data shows white people were stopped at rates roughly equivalent to their share of the population, but that includes what appear to be thousands of Hispanic people wrongly categorized as white.)

The records indicated that Jefferson Parish deputies tend to classify Hispanic drivers as white: Five of the top 10 most common last names of people cited as "white" on tickets were Rodriguez, Martinez, Hernandez, Garcia and Lopez. That's basically impossible: the U.S. Census Bureau says more than 90% of people with those five last names are Hispanic.

Seven experts on racial profiling who reviewed the Jefferson Parish data obtained by WWNO/WRKF and ProPublica said the level of misidentification is nearly unparalleled around the country. Three who have done in-depth studies of traffic stop data collection could name only one other law enforcement agency — the Texas Department of Public Safety — that engaged in the same practice to a similar extent.

To try to assess the actual numbers, the news organizations looked at the traffic stops by last name.

We looked at the top 10 names of white people cited in the list, which represented about 1,800 stops. Six of the top seven names were reported in the U.S. Census Bureau surname tables as more than 90% likely to belong to people who do not identify as white. We could not look at all

names in our data set because among the less common last names, there were many for which we could not reliably assign a race.

According to an attorney for the Jefferson Parish clerk of court, where the data is held, the misidentification is happening at the time of the stop. Traffic citations used by the Sheriff's Office are handwritten and include a blank space for race and sex. It is up to the deputy to determine the person's race or ethnicity, which they typically do by hand-writing single letters on the ticket: W for white, B for Black, A for Asian and H for Hispanic, for example.

The Sheriff's Office did not respond when asked whether their deputies are trained to exclude the category of Hispanic when determining someone's race.

The Sheriff's Office sends information from those forms to the traffic court, which uploads the data into its system, said Carey Daste, in-house counsel for the clerk of court. Daste and Donald Finger, judicial administrator for 1st Parish Court, said any errors occurring in the identification of someone's race or ethnicity are not happening on their end, as they are simply the recipients of the data and do not input any information themselves.

The Stanford project has evaluated more than 100 million records from law enforcement agencies across the country, and of those, only the Texas Department of Public Safety appears to have misidentified Hispanic people as consistently as the Jefferson Parish Sheriff's Office, Phillips said.

A Texas state law requires officers to record the race of every driver during traffic stops to combat racial profiling. But an investigation by TV station KXAN in Austin found that between 2010 and 2015, troopers with the Texas Department of Public Safety misidentified "more than 1.9 million drivers with traditionally Hispanic names" as white. And just like in Jefferson Parish, the "most common last names of drivers stopped and recorded as white by troopers [were]: Smith, followed by Garcia, Martinez, Hernandez, Gonzalez and Rodriguez," according to the report.

Texas Department of Public Safety Director Steven McCraw said at the time the problem could be attributed to errors made by the troopers or flaws with the department's computer system, saying he would work to address both. A year after the 2015 investigation, the number of Hispanic people misidentified as white had dropped by more than 75% due to an increased focus on improving the accuracy of data collection.

Critics, however, assert that misidentification by officers may be done on purpose, to conceal racial profiling. Alex del Carmen, an associate dean and professor at Tarleton State University's School of Criminology, Criminal Justice and Strategic Studies, said it is difficult to prove intent. At the same time, he added that it is "inconceivable" for a deputy to look at a person who speaks only Spanish, who is listening to Spanish music in his car, and who has the skin tone of someone of Hispanic descent, and to mark them as white without there being some intention behind the action.

“You could say the person was lazy,” del Carmen said. “You could also say, well, maybe the officer intentionally did that to be able to lower the number of individual Hispanics that he or she stopped, because they were being scrutinized.”

A Fear of Driving

Local activists and some Hispanic residents of Jefferson Parish do not believe that the misidentification of their ethnicity by deputies is a series of innocent errors, given the history of the Sheriff’s Office.

Since 2000, the Hispanic population in Jefferson Parish has more than doubled, according to the U.S. Census Bureau, growth driven in part by Central American immigrants arriving in search of work during the rebuilding efforts after Hurricane Katrina. Many of these immigrants settled in Jefferson Parish due to affordable rents and landlords willing to accommodate undocumented people.

Tensions escalated during the Trump administration, when anti-immigrant rhetoric was at its height. While New Orleans refused to work with U.S. Immigration and Customs Enforcement and was at one time labeled a sanctuary city by state Attorney General Jeff Landry, the federal government found a willing partner in the Jefferson Parish Sheriff’s Office.

“The Trump policy on immigration is the first one in a long time that has made any sense to me,” then-Sheriff Newell Normand said in 2017. A year later, his successor, current Sheriff Joe Lopinto, told a group of Hispanic activists that he would continue the policies of his predecessor, “even though it may lead to the deportation of undocumented immigrants,” according to The Times-Picayune and The New Orleans Advocate.

The Department of Homeland Security has awarded the Sheriff’s Office multiple grants since 2017 to assist in the identification and deportation of undocumented people. One of the key tactics in doing so is traffic stops, which has left many Hispanic people in Jefferson Parish afraid to drive.

“I think we just leave our houses kind of terrified,” said a local activist who asked to remain anonymous due to his immigration status. “I’m white-knuckled on the steering wheel, just making sure I’m always going the speed limit and that everything on my car is perfect. Because for any tiny thing, you just don’t know how the police might react and what could happen.”

Without the data collection to depend on, determining whether Hispanic drivers have been stopped disproportionately often is difficult. The news organizations tried. To show there had been disproportionate ticketing of Hispanic motorists in Jefferson Parish, we would have needed a way to reliably reassign races to everyone in the data set, but there were many names that we could not reliably assign a race to. An analysis based on where drivers live was not possible given limited address information on the citations.

Nonetheless, Rachel Taber, a local immigration activist, said she has witnessed sheriff's deputies cruising predominantly Hispanic neighborhoods, stopping people randomly, and then arresting them in coordination with ICE agents.

"People have learned through lived experience that the police are not someone you can go to for protection, but are dangerous to communities of color," Taber said.

Constantino Rodriguez was cited for driving without a license in 2019 and misidentified as white. He owns a concrete company, and he said sheriff's deputies routinely pull over his employees, who are mostly Hispanic and work in the construction industry, which is known to employ undocumented people.

"I was on vacation and my guys called me and said they got pulled over one block from the job because they didn't have seat belts on," he said. "They asked for their IDs, asked where they were from and if they spoke English."

Rodriguez said this happens several times a week. The records showing that only six Hispanic people were cited over a six-year period, he said, are "complete and utter lies."

