

From:

Date: September 7, 2021 at 10:23:27 PM PDT

To: "Smith, Brandon C." <BCSmith@cityofberkeley.info>

Subject: Thank You

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Officer Smith,

My name is _____ the person whose car was hit by the hit and run driver on Marin earlier today.

It's been a long day of sorting out insurance and all the details, but before calling it a day, I wanted to take a moment to thank you for your excellent service and care in the aftermath of the accident.

I feel so fortunate that after that awful experience of being slammed into, with the driver speeding away, so many kind and caring strangers came to my rescue and supported me. I appreciated your kindness, patience, empathy and professionalism in taking care of the situation. It really did mean a lot to me to feel supported in this way. You helped me to remain calm.

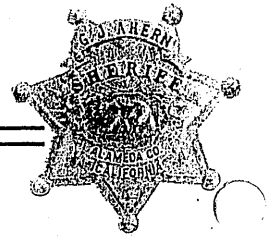
With the world seeming to get more insane and mean every day, I really do appreciate every single kind word and deed.

Please feel free to share this note with your supervisor or if you'd care to share your supervisor's email address, I'd be happy to pass on these thoughts myself.

All the best,

Alameda County Sheriff's Office

Lakeside Plaza, 1401 Lakeside Drive, 12th Floor, Oakland, CA 94612-4305



Gregory J. Ahern, Sheriff

Director of Emergency Services
Coroner - Marshal

(510) 208-9865

August 17, 2021

Jennifer Louis, Acting Chief
Berkeley Police Department
2100 Martin Luther King, Jr. Way
Berkeley, California 94704

SUBJECT: SERGEANT ANDREW FRANKEL AND OFFICER CHRISTOPHER MAJOR

Dear Chief ^{JEN} Louis:

On August 5, 2021, the Alameda County Chiefs of Police and Sheriff's Association, in alliance with the 100 Club of Alameda County, hosted the annual Alameda County Peace Officers' Memorial Ceremony. Each year we honor those law enforcement officers whose lives were lost during the performance of duty and protecting their respective communities. This annual and public event is held at the Lone Tree Cemetery in Hayward, California.

In front of the memorial wall upon which all those honored members have their names engraved, various uniformed agencies' honor guards assist with the presentation of the flag and standing guard at the memorial. At the same time, the name of each fallen officer is read aloud to those in attendance. Please convey my sincere appreciation to Sergeant Andrew Frankel and Officer Christopher Major for their participation in this year's ceremony.

Sergeant Frankel and Officer Major's participation in the services helped ensure that those who attended (family members, friends, and colleagues) the Peace Officers' Memorial Ceremony remember that **we did not, do not and will never forget** the contributions of those members' service to our law enforcement community. Their efforts and collaboration, along with the other uniformed officers, certainly contributed to a very fitting and successful event.

Very truly yours,

A handwritten signature in cursive script that reads 'Casey Nice'.

Casey Nice
Assistant Sheriff

CCN:cqv

Hello Chief Rodrigues,

I am a Berkeley resident and want to let you know what a great job Officer Schikore is doing. He is very responsive to our neighborhood's needs. He has been so helpful in keeping our neighborhood safe and clean. He has helped in so many ways, whether in making sure trash on our street corners is hauled away or a tent that's blocking our sidewalks is addressed. I am so grateful for the BPD and especially Officer Schikore for all of your help. As his Chief, I wanted to let you know of Officer Schikore's excellence!
Thank you!

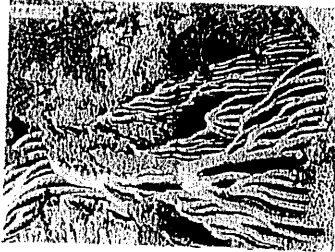
Sept 2, 2021

Dear Chief of Police -

I recently wrote a note of gratitude to Officer Fitch (Badge 100) of the Berkeley Police Department. I thanked her for her help and intervention in a situation that was getting very difficult - after I was hit by a beam falling from the ceiling onto my bed and injuring me -

I was very impressed with Officer Fitch. She handled the matter with great professionalism and compassion - she is wise and strong beyond her young years. →

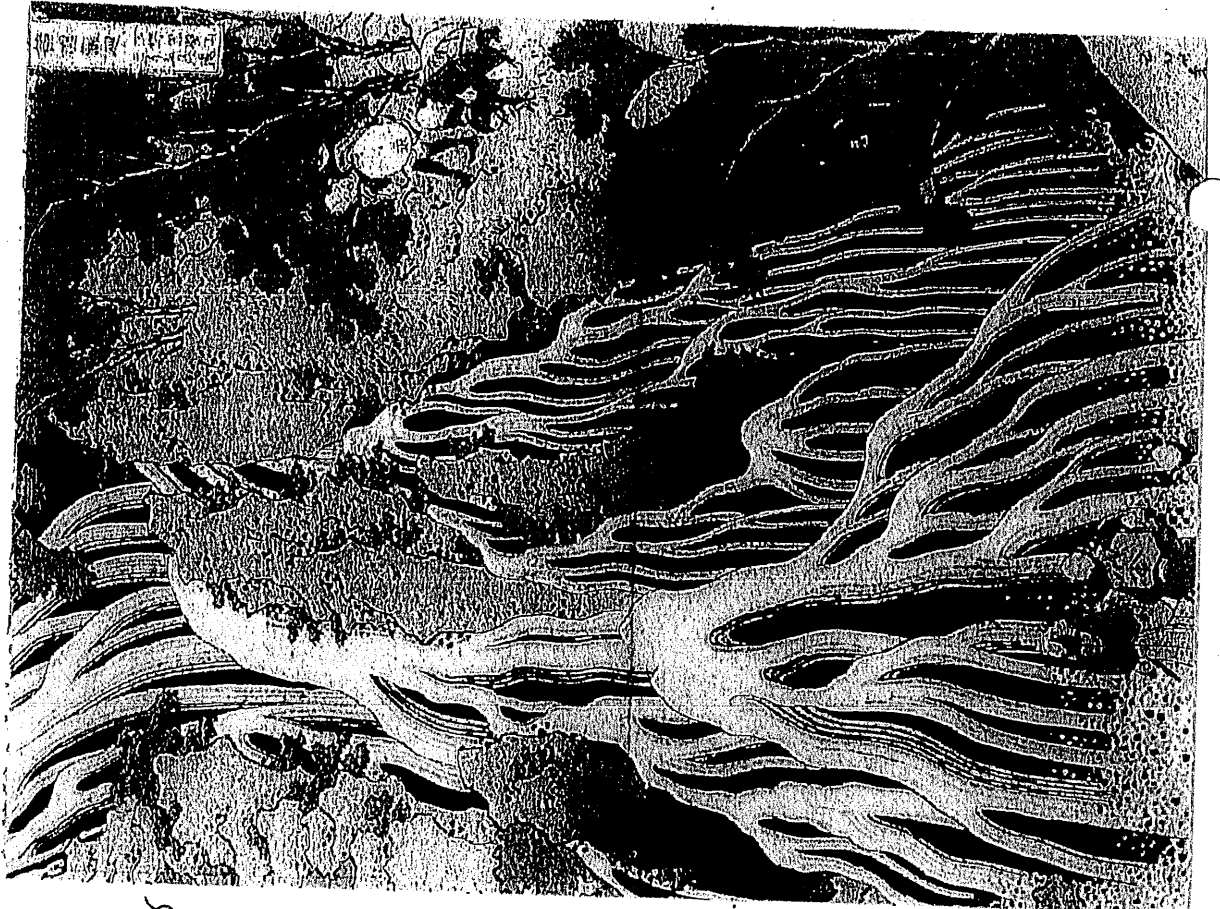
I asked her to ~~keep~~ show you
my note to her - and I
beg you to place both notes
in her professional file -
she is a great asset to the



Katsushika Hokusai
The Falling Mist Waterfall at Mount Kurokami in Shimotsuke Province, 1832

Berkeley community and to
your Department.

Best regards, and
STAY SAFE!



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To Whom It May Concern,

I am writing to tell of a wonderful experience I was afforded by Police Officer Zach Gordon. On August 31, 2021, I left my phone at the local post office. When I went back to retrieve it, the phone was gone, and the post office was closed. I called the Berkeley Police Department, and Zach arrived at my home to take a report. He then spent over an hour looking for my phone in the area where we located it on iCloud.

Zach, in his way of being, is kind and reassuring. His compassionate presence was a real comfort that evening as I experienced anxiety over the loss of my phone. We in Berkeley, are so fortunate to have such men and women of service. I will never forget him, and I pray that he and all the Berkeley police officers will be safe in their roles of support.

Gratefully,

September 21, 2021

Berkeley Police Department

Letter Regarding Officer Salas, Badge#141

I am writing to praise the efficiency, kindness, and demeanor of Officer Salas, Badge #141. In his ordinary line of duty, he found my stolen truck and telephoned me with its location. He was kind enough to wait for twenty minutes until I arrived to meet him, and then he stayed while I arranged to move my vehicle. He also checked to see that the catalytic converter was still in place. Officer Salas was at once efficient, reassuring and pleasant.

I had reported the theft of my truck to the Oakland Police on August 30th. My experience with them was unfortunately not as positive as my experience with Berkeley. I had purchased my pick up truck new in 1997 and had used it for many years in my work as a landscape contractor, garden designer, and maintenance gardener. Although I am now retired, I remain an avid gardener and someone who advises and helps others with their gardens and plantings. I am so grateful to Officer Salas for helping me retrieve my truck that I can hardly express my gratitude.

I hope you will be sure to thank him for me!

With gratitude and affection,

Officer Morales quickly and calmly resolved a situation that was previously deadlocked between me and my landlord over a security camera the landlord took possession of. With a quick call he was able to explain to my landlord about the law and my landlord's duties under the law with respect to stealing my property. After the landlord balked on returning the camera, Officer Morales made a quick visit to better explain and assess the situation. The officer was very clear at all times about what his job was, what he could do, and which issues needed to be resolved in court. I'm very thankful for his intervention and hope that both parties involved will not need it in the future.



Berkeley Police Department Memorandum



To Chief Louis Date 10/4/21

From Lt. Dan Montgomery, via the Chain of Command

Subject **Commendation for Officers involved in a Pursuit**

On September 21st, 2021 Berkeley Police Officers were involved in a Pursuit of a vehicle taken in the commission of an armed carjacking and subsequently used in several robberies the day before in Berkeley. In one case, the victim was dragged a distance by the getaway vehicle.

The vehicle was first spotted by our Bike Force Officers Greg Michalczyk and Jimmy Seaton. They recognized the wanted vehicle and started after it while coordinating other responding units. Several units answered the call locating the vehicle which alerted to their presence and started to flee.

Due to the time of day, conditions were favorable. School was still in session and the commute had not really begun. Several officers were at one point involved in calling the pursuit which was professional and controlled. Officer Carlos Maldonado, Officer Dustin Morillas, Officer Kyle White and Sergeant Sam Speelman took turns as appropriate to update the conditions. Many more officers were involved in supporting the pursuit. The suspect vehicle made its way through Berkeley, North Oakland and onto Highway 24 eastbound.

Traffic conditions remained favorable as it entered pre-commute traffic. Eventually, the driver attempted to pass cars on the right-hand safety lane and struck a pickup yielding to police. The suspect ran into a retaining wall causing significant damage, airbag deployment and ultimately disabled the car. Officers conducted a high-risk car stop and safely took three suspects into custody.

The occupants of the car suffered minor non-life-threatening injuries. Sergeant Kacalek, Sergeant Kleppe and Officer Stern transitioned providing first aid to one of the suspects.

When officers called for a traffic break, responding units stopped traffic and redirected it off of the Highway. While en route the scene, I only observed professional controlled driving on the part of responding units.

Sergeants Sam Speelman and Kevin Kleppe worked together to coordinate the processing of the scene and the handoff to Detective Sergeant Chris Bonaventure and Detective Neil Egbert. I was proud to observe the professionalism of the officers involved in this case in both the pursuit and ensuing investigation. I want to commend those involved. They worked together to safely bring the suspects into custody, likely preventing the suspects from victimizing more citizens of Berkeley.

Also contributing to this case were: Officers Bold, Ordaz, Smith, Maldonado, Salas, Gibbs, Hogan, Waggoner, De Bruin, Muratovic, Morales, Radey, Pickett, Egbert, Sergeants Ross and Marble.

From: "Louis, Jennifer A." <JLouis@cityofberkeley.info>

Date: October 14, 2021 at 07:14:22 PDT

To: "Durbin, Michael R." <MDurbin@cityofberkeley.info>, "McGee, Matthew" <MMcGee@cityofberkeley.info>

Subject: FW: Two out of control encampments on Shattuck need to be dealt with NOW

Solid work and shout out for Schikore's efforts

-----Original Message-----

Sent: Tuesday, October 12, 2021 4:59 PM

To: Radu, Peter <pradu@cityofberkeley.info>

Cc: Williams-Ridley, Dee <DWilliams-Ridley@cityofberkeley.info>; Buddenhagen, Paul

<PBuddenhagen@cityofberkeley.info>; Bellow, LaTanya <LBellow@cityofberkeley.info>; Louis, Jennifer

A. <JLouis@cityofberkeley.info>;

Arreguin, Jesse L.

<JARreguin@cityofberkeley.info>; Harrison, Kate <KHarrison@cityofberkeley.info>

Subject: Re: Two out of control encampments on Shattuck need to be dealt with NOW

Peter, thanks for your follow-up with [redacted] Fyi, [redacted] and I joined Officers George Schikore and Alex McDougal with [redacted] this afternoon at Funky Door. George did a great job in convincing [redacted] to wait a week. We realize these are challenging times for everyone, but we appreciate the sense of urgency for everyone on this matter.

Best, [redacted]

To whom it may concern:

I would like to say a good word for Officer Semir Muratovic, who responded to a call I made this afternoon during a hostile encounter with a person who is living in a vehicle at

Officer Muratovic talked with me and a neighbor who witnessed part of the encounter, then with the vehicle dweller, and again with me by phone. He was understanding and supportive, explaining our respective rights and what I may do in case of further trouble. Officer Muratovic dealt with the situation in a markedly straightforward, skillful and humane way. I am grateful for his work, and I hope the Board will recognize the importance of such an officer to me and my neighbors, as well as to the city as a whole.

Thank you,

Hi, Lieutenant Turner. This is [redacted]. No need to call me. I just wanted to thank you for getting the case up to the DA's office from when that guy broke into the rental garage of my home down at [redacted]. Thank you so much. I live at [redacted] but it was my rental that was broken and it's made my tenant happy to know that he was caught you take care and be safe out there.

Hello, Lieutenant Turner. This is [redacted]. I live down the block from [redacted]. I just wanted to thank you for following up on that robbery and getting it taken care of in such a timely fashion. What extraordinarily professional work and I know you guys are stretched. So, thank you very much. My great appreciation and commendation take care have a good day bye bye.

Hello, Lieutenant Turner, it is [redacted] again my call was actually about the robbery at [redacted] place, I'm blanking on her last name [redacted] rental unit a [redacted] so it's nice to know that he has been arrested and is off the streets at least for a while. Thank you so much for keeping our City a wonderful place to live bye bye.

OCTOBER 21, 2021

BERKELEY POLICE DEPARTMENT
2100 MARTIN LUTHER KING JR WAY
BERKELEY, CA 94704

DEAR BERKELEY POLICE,

I WISH TO EXTEND MY HEARTFELT
THANKS TO THE BERKELEY POLICE AND
SPECIFICALLY OFFICER SHIRA WARREN
FOR SAVING MY LIFE. I AND MY FAMILY
CANNOT THANK HER ENOUGH FOR HER
VALIANT SERVICE.

GOD BLESS OFFICER WARREN AND THE
BERKELEY POLICE,

SINCERELY,

From: John Geissberger <JGeissberger@albanyca.org>
Date: October 18, 2021 at 11:11:21 AM PDT
To: "Louis, Jennifer A." <JLouis@cityofberkeley.info>
Subject: Thanks

Jen,

I wanted to thank your staff for the help yesterday on the disturbance call we had at Golden Gate Fields. Sounds like they really helped out and were able to safely detain an individual and recover the firearm used in the incident.

Thanks again for the assistance and please stay safe,

John

John Geissberger
Chief of Police
Albany Police Department
1000 San Pablo Ave
Albany, CA 94706
Dispatch: (510) 525-7300
Direct: (510) 528-5789
Fax: (510) 525-1360
<http://albanyca.org/police>

From:
Sent: Friday, October 22, 2021 3:45 PM
To: Coats, Jennifer R. <JRowland@cityofberkeley.info>
Subject: Ofc. Olmos Alvaro

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Hi Sgt. Coats,

I just wanted to reach out to let you know about a really positive experience I had with Officer Olmos Alvaro. I briefly left my bag at a restaurant and when I returned, it was gone. I didn't file a police report and didn't expect to ever see the contents again, but later that night I received a call from Officer Olmos. Someone had turned my keys (which were in my bag) in to him and let him know they found them in Ohlone Park. He told me he walked the length of the park (which, as you know, is not short) pushing the panic button on my car key to see if my car was in the area. When that was unsuccessful, he saw that I had a gym scanner on my keys and so he went all the way to my gym and had them look up my phone number.

Just wanted to let you know - it felt like he went above and beyond! While my keys weren't the most valuable thing I lost, they definitely would have a fairly expensive pain in the butt to replace.

Best,

From: Brian Mason <Brian.Mason@edmontonpolice.ca>
Sent: Friday, October 29, 2021 8:21 AM
To: BPD Webmail <bpwebmail@cityofberkeley.info>
Subject: Followup on Check on Welfare Call

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Hello,

Last night I placed a call for service in regarding a check on welfare regarding a potentially suicidal person that was believed to be living in Berkeley. Information that was available to me at that time was quite scarce as the concern was coming from various social media networks. Despite the minimal amount of information available I was overwhelmed by your department's response. In my time in policing I have seen a variety of responses to concerns, especially with mental health and limited information however this response was by far one of the finest I have seen.

First the call taker upon my initial contact, sadly I did not note the operator ID number, was very professional and thorough. The flow of the questions and the tone were calm and non-judgemental. The professionalism and customer service displayed were of a high calibre in my opinion.

Following this my interaction with the responding member, Officer GORDON, was one of special note. GORDON called to obtain additional information and clarify certain points from my initial call. In speaking with GORDON his demeanor was not only highly professional but also one that relayed genuine concern and compassion for the situation. Throughout the entirety of the interaction as GORDON worked to bring the call to a resolution it was apparent he was diligent and committed. At no time did I build any suspicion or idea that GORDON was merely going through the motions to deal with the call and move on to the next but rather there was a genuine air of concern and compassion within his tone and with how he worked to try and locate the person of concern.

Overall the interaction I had with Officer GORDON was not just satisfactory but one that displayed a genuine wanting to help his community. If you feel it beneficial please feel free to share this with Officer GORDON but if nothing else I wanted to ensure that attention was brought to what I felt was someone who displayed genuine concern and compassion for the wellbeing of their community and went an extra step to ensure a positive resolution to a concern.

Regards,

Brian Mason Reg. #4085
Constable
Southwest Division
Edmonton Police Service
780-996-2517
brian.mason@edmontonpolice.ca

EDMONTON
POLICE
SERVICE

From:

Date: November 4, 2021 at 3:50:17 PM PDT

To: "Montgomery, Daniel R." <DMontgomery@cityofberkeley.info>, "Netz, Erin" <ENetz@cityofberkeley.info>

Subject: Thank you!

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Lt. Montgomery, Lt. Hong and Ms. Netz,

Thank you very much for arranging what turned out to be an eye opening and extremely informative session in the heart of BPD Dispatch. Erin Netz was amazing. Her skill and dexterity navigating the difficult tasks of dispatch were very impressive. I had not appreciated the pivotal role that dispatch plays and how important it is to a smooth functioning police department. The cooperative interaction among all dispatchers was also impressive. Well done!

Sincerely,

From:

Date: November 5, 2021 at 10:29:07 PDT

To: "Perkins, Jamie" <JPerkins@cityofberkeley.info>

Cc: "Speelman, Samantha M." <SSpeelman@cityofberkeley.info>

Subject: Excellent service

Reply-To:

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Two days ago my father was a missing person. At 87 years old I was very worried for him.

The efforts of officer Jackson were very instrumental in not only locating my dad (which officer Jackson did), but in calming my sister and myself as he performed his duties as an investigating officer.

His intentional communication and interaction with the reporting parties and his empathy for the situation were outstanding.

His service orientation,(ya know for the public good) seemed human, organic and unforced.

This is the type of officer a department would do well to clone.

I apologize for any urgencies that rose to discourteous in my sister or myself and hope we didn't offend this officer while he helped us.

We wanna be his friend in real life and consider him a blessing to the city of Berkeley..

From:
Sent: Thursday, November 4, 2021 10:15 PM
To: Manager, C <CManager@cityofberkeley.info>
Cc: @cityofberkeley.info
Subject: Thank you- SE shattuck and Blake corner

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear City Manager

Thank you and the rest of your team for the effort to make SE corner Blake and Shattuck cleaner and safer to walk.

Formerly the corner had 30 feet of household trash that accompanied a camper on the corner for months and months. The corner no longer felt like public space but the private residence of this camper.

We in south Berkeley appreciate the city making the streets welcome for walkers, especially the many middle school students who cross Shattuck to go to Willard MS and the patients attending the Herrick hospital and the Cancer center who walk from the neighborhood.

We have to make public space available for children and adults of all walks of life.

Thank you

Resident

From:
Sent: Friday, November 5, 2021 1:45 PM
To: @cityofberkeley.info; @cityofberkeley.info; Schikore, George <GSchikore@cityofberkeley.info>; Rodrigues, Veronica <VRodrigues@cityofberkeley.info>; McGee, Matthew <MMcGee@cityofberkeley.info> @cityofberkeley.info @cityofberkeley.info
Subject: FW: Thank you- SE shattuck and Blake corner

Team—

Not often we get these kind of messages, so just wanted to pass this bit of gratitude along.

Thanks for your hard work. It's a pleasure to do this with you.

Have a great weekend and see you Tuesday.

In appreciation of
your services,
Sincerely,

Bradley

10-27-2021
Dear Administrator,

On Sat. eve. 10/23, a car ran
over a dog accidentally on

in front of my house,

I want to commend the
officers, first responder who
assisted, the joining, invaluable
owner of the dog, who died
quickly. The officers and
Responder applied their
skills, were so helpful
to all involved!!

To the Berkeley Police Dept, Oct. 2021

I wanted to thank you
so much for responding to
my call when my neighbors
dog was hit and killed on

St. last week. Your
dispatcher was so kind and
let me know that they usually
don't respond when the animal
has died. But to my surprise two
officers arrived and stayed
with my grieving neighbor. I
watched from across the street
the compassion and kindness your

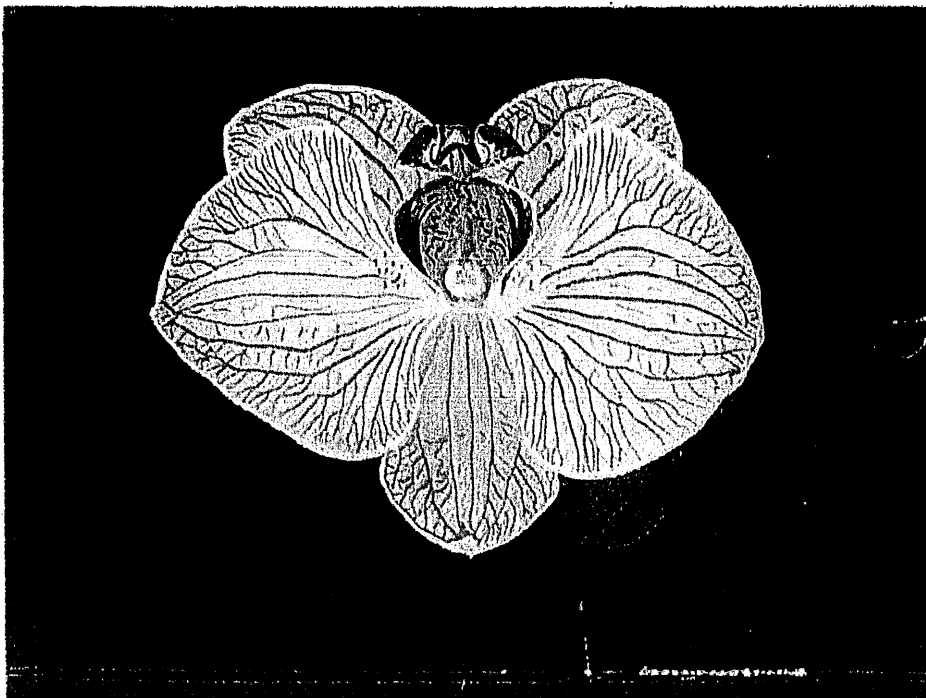


Officers showed and soon called
the fire department, I imagine
for a welfare check.

We don't often see the
amazing work that police
officers do, it truly warmed my
heart to see this act of love
and kindness. Thank you again!

Sincerely,

Heartfelt Thanks for
your response to
my concern for my
friend and my call
for help for him.
It is good to know you
tried to engage him.



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From:

Date: November 23, 2021 at 17:25:33 PST

To: police@ci.berkeley.ca.us

Subject: Commendation

I am writing Berkeley Police Department to commend the outstanding police community work, of Officer Muratovic #159, for his due diligence and honor, initially unaware that he was assisting and helping two retired law enforcement officers. Sometime ago I lost my newly obtained Bank of America debit and business card. I was extremely distraught having done business with those cards and now, having to get new cards with new numbers would be time consuming and difficult to deal with as you would know going forward. Being a praying man hoping my cards didn't get into the hands of miscreants and or that maybe some kind citizen would find them and turn them into the police somewhere. Well prayers answered and some kind Berkeley citizen found them and turn them over to Officer Muratovic. He could have just booked them into property or worst yet dumped them by the waist side. But no, he reviewed the property saw a "miranda warning" card which is from my former departments work as an investigator and a current FBI leadership card. Clearly he recognized that I was either an active or retired law enforcement. He then unexpectedly with courtesy to the citizen, me and my wife utilized "his" investigative tools and search the public business name on my card. The results came back to my wife's number which she is listed as one of the proprietors my number not listed, and made contact with her via voicemail. My wife is a retired former San Francisco Sheriff's Senior Deputy, working directly under the legendary as a Training Officer, 32yr veteran. I retired from SFPD and SFSD after 35yrs, working most of my career in Special Investigations, narcotics/homicide/gangs, member of the infamous "CRUSH" unit (see wiki") and other investigative services, which led to Hollywood and Don Johnson of former "Miami Vice" fame cop show, and also produced tv "Nash Bridges" tv series in 1996, which led to lawsuits unfortunately do to their mpc violations on my character and name! I mention our law enforcement history of 60 plus years experience not for notoriety or acclaim, for we humbly and most certainly worked in the spirit of community servitude. This tale once again for any officer, goes to show that you never know who you are addressing or helping out, be they pulper of president. Officers are to always work in such high integrity and consistency to display the trust and power invested in them by the state, to conduct themselves in like manner daily. This young officer exhibited the outstanding behavior and investigative wherewithal, to personally seek out and return our items and property, in respect and honor of retired former law enforcement personnel, with dedication and responsibility. We met Officer Muratovic last night when he personally returned my property, he was a joy to meet looking sharp and very professional. In these coming years we hope and pray our Bay Area law enforcement entities create new incentives to keep these outstanding young officers, who are leaving by the hundreds to other departments nationwide. This is unacceptable and we must partner with our communities, government agencies and others to vigorously hold on to these officers, for the great and future advancement of our departments, local state and federal. With "Blue Pride" and community service we honorably recognize and commend Officer Muratovic #159, for outstanding community police work.

Yes, I am not sure if this is the right number, but I got a business card from one of our local police officers the other day, and it's listing combinations as this number 981-4736 any event. I do want to commend and show gratitude for Officer Ruff's conversation. The other day, he educated me a lot about the strains. What shall I say difficult constraint the police department is under many times when it comes to handling situations where people are. Shall I say difficult to coordinate in terms of people, for example, setting up a tent right in a commercial area, blocking the sidewalk, etc. How the police department hands are really tied by police policy of our city and the council, et cetera, et cetera, I regret that and I commend the police department for all their efforts and I hope your situation improves. I hope the city is more, shall I say, balanced in its approach towards the police department and the people who served so well. My name is: My number if you need it is . . Sorry it took me. So long to make my point, all the best to all of you; peace, thanks bye.

Ofc. Waggoner should be commended for his de-escalation tactics as his challenge ultimately dissuaded the suspect from barricading and led to his peaceful surrender.

Detectives Hogan and Edwards should be commended for their ability to use the details gather in the preliminary investigation by Ofc. Gardner to gain admissions from the suspect.

Please forward this email up the Chain of Command as a commendation for the named officers.

Sgt. Ross

The very next day Officers. K. White, Waggoner, Gardner, and I responded to a burglary in progress

The victim reported cameras inside of her apartment were livestreaming the suspect prowling inside. Officers quickly arrived and setup containment outside of the apartment. Ofc. K. White saw the suspect use a towel to wipe down the bathroom window frame which turned out to be the point of entry. We ordered the suspect numerous times to come out and surrender, however the suspect did not comply. After several minutes of it appearing the suspect was going to barricade, a challenge from Ofc. Waggoner prompted him to come out the front door where the suspect, [redacted] was detained in handcuffs. As soon as [redacted] was detained in handcuffs and the scene was secured, Ofc. Gardner told me [redacted] matched the physical and clothing description of the residential robbery he handled (2) months prior. Ofc. K. White told me [redacted] matched the description of the suspect from the [redacted] burglary and that he recognized property in [redacted] possession as stolen from: [redacted] burglary.

I called Sgt. Bonaventure and briefed him on the circumstances of the burglary and Ofc. Gardner's observations that [redacted] matched the physical and clothing description from the residential robbery. Sgt. Bonaventure assigned Det. Edwards to interview [redacted]. Detectives Edwards Hogan were able to utilize the fine details from Ofc. Gardner's thorough interviews with the victim to gain incriminating admissions that implicated him in the robbery as well as the above referenced burglaries.

Det. Edwards later showed the robbery victim a photo lineup, however she failed to identify as the suspect.

The suspect [redacted] has prior arrests and convictions for PC 261, PC 220, PC 212.5, PC 211, and PC 459. Just prior to his arrest, he had been released on parole after serving 20 years of a 40 to life sentence. [redacted] had been living across the street from the PSB at Options. On 01/27/20 [redacted] was charged with PC 209(b)(1), PC 211, PC 459 X 4 counts, and PC 422. Nearly a year later he plead to "No Contest" to PC 459 X 3 counts and PC211 with an enhancement for prior serious felony convictions. [redacted] was sentenced to 15 years in state prison.

Officer Gardner should be commended for the quality of his initial investigation of the residential robbery which included the detailed victim interviews and collection of probable DNA evidence. Additionally his recall of the suspect's description (2) months later is remarkable. Had he not made the link, the burglary report may not have come to the attention of Robbery Detective's, and this serious residential robbery may have gone unsolved.

Ofc. K. White should be commended for his coordination of the response to the in-progress burglary, his investigation, and then his recognition of the suspect description from a burglary from a month prior and the recognition of stolen property from his previous shift.

Begin forwarded message:

From: "Ross, Sean B." <SRoss@cityofberkeley.info>

Date: December 9, 2021 at 5:26:45 PM PST

To: "Montgomery, Daniel R." <DMontgomery@cityofberkeley.info>

Subject: Commendations for Ofc. Gardner, K. White, Waggonner, and Detectives Hogan and Edwards

Lieutenant Montgomery,

On 11/22/19 Ofc. Gardner responded to [redacted] for a Hot Prowl Burglary. Ofc. Gardner arrived, interviewed the victim, and quickly determined it was a residential robbery with sexual overtones. In summary, the victim was sleeping when she heard her doorbell ring. She did not answer, then about 15 minutes later came out of her bedroom and found the suspect standing in her kitchen. The suspect said he was a maintenance worker sent by the landlord. The suspect asked the victim to show him around and point out anything in need of repair. When they got to her bedroom the suspect violently grabbed her from behind with his arms around her neck and body. The victim began to fight back and the suspect told her he had a knife and would kill her. The victim continued to fight back likely scratching the suspect's face and arm. The victim pushed the suspect and she fell to the ground. The suspect then began punching her on her back and head before picking her up and telling her he just wanted money. The victim directed the suspect to her wallet and then the suspect put her in a choke hold and strangled her for approximately 10 seconds. He threw her down on a bed and told her he wasn't going to rape her while he held her down and took cash from her wallet. He then picked her up, shoved her into a bathroom, and told her to stay there and not call out. The victim locked the door, climbed out the window, fled around the rear of the house, and then scaled a fence to the safety of a neighbor's residence.

Ofc. Gardner conducted (3) interviews with the victim and obtained very detailed statements. Upon learning of the high level of resistance offered by the victim, Ofc. Gardner recognized the importance and likelihood of the suspect's DNA being under the victim's fingernails so he had the ID tech scrape her nails. Ofc. Gardner also recognized the high level physical contact, violence, and sexual overtones which prompted him advise Detective Sergeant Grant of the Sex Crimes unit. Ofc. Gardner documented this case

On 12/04/19 and 01/22/20 Ofc. K White investigated an (2) unremarkable residential burglaries, [redacted]. He documented them respectively.

, Esq.

Begin forwarded message:

From:

Date: December 10, 2021 at 1:47:16 PM PST

To:

Subject: Bus stop SE Corner of Parker and Shattuck

Since the City started enforcing various ordinances (as of three weeks ago) to clear tents and tent encampments from the Shattuck corridor between Ward and Haste St people are once again using the bus stop in our neighborhood at SE Corner of Parker and Shattuck. This bus stop has hardly been used for over a year because of a tent encampments right up against the bench and surrounding the bus stop.

I imagine this is true of the other bus stops in the corridor as well.

Please congratulate the City Staff on giving the corridor back to the neighbors and businesses in this area.

I hope the enforcement continues.

Sincerely,

Hello,

My name is . My daughter . is a freshman student at Cal. She was assaulted by a homeless person recently outside her dorm. Officer James Seaton was assigned her case. I admit I was initially skeptical of Berkeley PD capacity to follow up with her case, thinking it would be dismissed as crimes are ever increasing across the country, including Berkeley. Not only did he follow up to my questions, officer Seaton was obviously diligent in investigating this crime. Perpetrator has since been apprehended. I am very grateful for this and of course grateful for officer Seaton. He is an obvious asset to the city of Berkeley.

Thank you,

I am writing to offer a strong commendation to Officers A. Lomeli (badge #24) and George Schikore, along with the member of the Mobile Crisis Team that accompanied them to my home on November 28, 2021. My niece who has three minor children has been displaying signs of delusion and mental stress. I asked for a mental evaluation and for my niece to be involuntarily placed in a mental health facility. Officer Lomeli was the intake officer. From the very beginning, he showed empathy and was very careful to explain the options available to me. I did not get the outcome that I wanted. The officers and the Mobile Crisis Team member explained to me and my wife the law and why they were not able to honor my request. Although it wasn't what I wanted, I felt that the whole matter was handled compassionately and very diplomatically. I felt that all concerned were patient and cared about me and all of my family members who were involved. I really appreciate having the Mobile Crisis team to help sort things out and to give referrals for mental health services.

Take care,

Dear Chief Louis,

This morning at approx. 5 am, two trespassers breached our construction gate and entered the hotel via the garage. Our contract Security Officer could not locate where they went so I contacted the Police Department. The Officer who answered the phone (non-emergency #) was helpful and offered me advise on next steps. She dispatched Officers Mitchell and Villaroyal (sp?) to the hotel and they arrived quickly.

They immediately started a thorough room by room search for the trespassers (hotel is not open so almost 331 vacant rooms to search) and provided my staff with instruction for staying safe and secure. While we did not locate the trespassers (they may have fled), I really appreciate your officers prompt, professional and assistive actions on our behalf.

I would appreciate your added thank-you from our hotel to these officers for their diligence and help with this situation. We are fortunate to be located in a city with such a terrific Police Department!

Thank you and Regards,

General Manager

M 650.483.3927

Residence Inn Berkeley
2121 Center Street
Berkeley, CA 94704

Marriott.com/OAKRR

Begin forwarded message:

From: "Muratovic, Semir" <smuratovic@cityofberkeley.info>
Date: December 28, 2021 at 7:27:24 PM EST
To: "Tate, Jen" <JTate@cityofberkeley.info>, "Frankel, Andrew J." <AFrankel@cityofberkeley.info>
Subject: PEO Heroes!

Hello,

I am writing to commend the actions of PEO [redacted] regarding an injury hit-and-run investigation. [redacted]

On 12-28-21, an 83-year old Asian female suffered at least a broken Tibia (with additional diagnosis pending) when she was hit in the crosswalk on [redacted] and [redacted]. The victim, once fully independent, may never fully recover from her injuries and regain her prior function. The suspect vehicle was captured in high definition by a Tesla camera system, along with a partial plate.

PEO [redacted] who'd been attentive to the radio, spotted the vehicle shortly after and was able to obtain a full plate and location. Officers ultimately located [redacted] hiding in a nearby room.

Surveillance footage showed [redacted] as the driver and sole occupant of the suspect vehicle as it arrived. Post-miranda, [redacted] admitted to driving in the area of the collision but didn't recall hitting anyone and blamed it on being partially blind. [redacted] is currently active to CDCR Parole for PC 212.5 and has a lifetime of serious criminal offenses.

This is just yet another in a series of cases closed by a watchful Parking Enforcement Officer, most notably the recent one of a sexual battery to a disabled adult.

We are so lucky to have teammates that care and look out for us. Had it not been for this Parking Enforcement Officer, we could have had a long and possibly cold investigation ahead of us and this elderly woman may not have had any measure of justice.

Thank you,
Ofc. Muratovic

ALBANY CALIFORNIA

CITY OF ALBANY



POLICE DEPARTMENT
1000 SAN PABLO AVENUE
ALBANY, CA 94706
510 525-7300
510 525-1360 FAX

JOHN GEISSBERGER
CHIEF OF POLICE

www.AlbanyCA.org/police

January 3, 2022

Interim Chief Jennifer Louis
Berkeley Police Department
2100 Martin Luther King Jr. Way
Berkeley, Ca. 94704

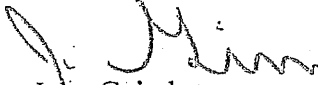
Chief Louis,

I want to thank you and your department for the assistance they provided us on December 21, 2021. We were dealing with a residential burglary suspect who was refusing to exit the victim residence and had limited staffing on-duty. We contacted your department for perimeter support and Lieutenant Daniel Montgomery, Sergeant Jen Coates, and officers Corey Bold, Kyle White and Rush Jackson immediately responded to assist.

Fortunately, we were able to resolve this matter and get the suspect in-custody without any injury to the officers involved. We could not have completed this mission without your departments assistance and I am thankful for the help.

Your staff's performance reflected well on your organization.

Sincerely,


John Geissberger
Chief of Police

RECEIVED

JAN 13 2022

CITY OF ALBANY

From: John Costenbader <JCostenbader@albanyca.org>
Sent: Wednesday, December 22, 2021 3:53 PM
To: Durbin, Michael R. <MDurbin@cityofberkeley.info>
Subject: Thank you

Mike,

First, congratulations, I hadn't heard about the promotion. Well deserved!

I was also reaching out to say thank you for the assistance provided yesterday by several Berkeley officers during an incident we had where a burglar had hunkered down in a residence. Lt. Montgomery, Sgt. Coates, Ofc. Bold, Ofc. White and Ofc. Jackson were a huge help. They were extremely professional and a great representation of the high quality officers at Berkeley PD. I greatly appreciated all the assistance they provided and I have no doubt it was large part of this situation coming to a positive ending with the suspect in custody.

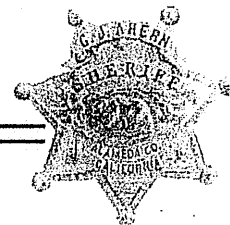
Thanks again,

John

John Costenbader
Lieutenant
Albany Police Department
1000 San Pablo Ave
Albany, CA 94706
Dispatch: (510) 525-7300
Direct: (510) 528-5783
Fax: (510) 525-1360
<http://albanyca.org/police>

Alameda County Sheriff's Office

Lakeside Plaza, 1401 Lakeside Drive, 12th Floor, Oakland, CA 94612-4305



Gregory J. Ahern, Sheriff

Director of Emergency Services
Coroner - Marshal

510-272-6866

December 21, 2021

Kevin Reece, Lieutenant
Berkeley Police Department
2100 Martin Luther King Jr. Way
Berkeley, CA 94704

Dear Lieutenant Kevin Reece:

I was pleased to hear the positive comments from Alameda County Sheriff's Office Division Commander Yesenia Sanchez with regard to your assistance to help make the 2021 SWAT Fitness Challenge a huge success! This two-day event incorporated tactical skills assessments and fitness competitions for our local SWAT teams. The teams and operators participated in ten tactical scenarios and five fitness and shooting challenges that tested their capabilities and responses to real-world events. The challenge allowed teams to validate the effectiveness of their training and to identify training gaps upon which to improve.

In addition, this challenge brought awareness of the George Mark Children's House in San Leandro and raised over \$58,000 for their organization. The George Mark Children's House is the first freestanding pediatric palliative care center that helps families with children and young adults who have a serious, often life-limiting medical illness and who seek family-centered medical care that emphasizes quality of life in a compassionate, supportive atmosphere.

This year we continued to work through challenges with our current health pandemic and without hesitation you overcame these challenges and ensured this event was a success.

This letter is presented to you in recognition of your commitment to the law enforcement community, your agency and the goal of training personnel for real-world events or disasters. Thank you for all your exemplary work.

Keep up the great work!

Sincerely,

A handwritten signature in black ink, appearing to read "Gregory J. Ahern".

Gregory J. Ahern
Sheriff-Coroner

GJA/YLS/sw

Lee, Katherine

From: Ismail Ramsey <izzy@ramsey-ehrllich.com>
Sent: Thursday, April 21, 2022 8:17 AM
To: Lee, Katherine
Cc: kccalavi@uci.edu
Subject: Probation/Parole searches
Attachments: 13-9972-p8k0.pdf


WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Can we forward to the full Board. This case is relevant to probation/parole searches in the context of traffic stops.

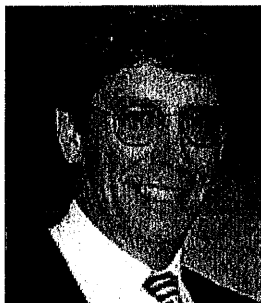
Thanks.

https://www.supremecourt.gov/opinions/14pdf/13-9972_p8k0.pdf

Opinion analysis: Traffic stops can't last too long or go too far, and no extra dog sniffs!

 scotusblog.com/2015/04/opinion-analysis-traffic-stops-cant-last-too-long-or-go-too-far-and-no-extra-dog-sniffs/

April 21, 2015



By Rory Little

on Apr 21, 2015 at 7:55 pm

The Court issued a seemingly simple rule today in *Rodriguez v. United States*: “A seizure for a traffic violation justifies a police investigation of that violation” – not more — and “authority for the seizure . . . ends when tasks tied to the traffic infraction are – or reasonably should have been—completed.” Because being stopped by police officers for traffic violations is a common occurrence for us all (not just drug dealers), this six-to-three decision probably gives some (small) comfort to many. Traffic stops have to be reasonably short, and unless there is reasonable suspicion of some other crime, officers can't use the stop as a subterfuge for extraneous investigation. Most specifically, says Justice Ruth Bader Ginsburg's opinion for the Court, officers can't prolong a traffic stop just to perform a dog-sniffing drug search.

But as Justices Samuel Alito and Clarence Thomas point out in separate dissents, the world is usually more complicated and nuanced than sound-bite summaries can accommodate. In fact, says Justice Thomas, the majority's rule will lead to “arbitrary results,” depending on how efficient, or technology-adept, the individual officer who stops a car is. And Justice Alito predicts, whether cynically or just realistically, that officers will now be trained on the “prescribed” protocols that will still enable them to conduct traffic-stop dog sniffs if they want to. (He says he “would love to be the proverbial fly on the wall” for such training sessions – really?) Moreover, he finds it “perverse” that if the officer in this case had not waited for a back-up officer for safety reasons, he could have performed a solo dog sniff without any constitutional problem.

Brief facts

Two prior posts (previewing and then analyzing the oral argument) describe the setting for today's Fourth Amendment decision. One midnight in Nebraska, "K-9" Officer Morgan Struble was driving alone with his drug-sniffing companion when he saw Rodriguez's car drift over the shoulder line and then jerk back onto the road. Struble stopped the car, asked for an explanation ("pothole"), and took Rodriguez's license, registration, and proof of insurance to run a records check back in his patrol car. He asked Rodriguez to accompany him, but when Rodriguez asked if he had to and Struble said no, Rodriguez "decided to wait in his own vehicle." (This brings to mind the many videos populating the internet these days that show people not complying with police requests unless ordered to. As I often remind my students, these videos tend not to show the incidents where such "standing on your rights" goes badly for the private citizen. "Know your rights, but don't always invoke them," is my realpolitik advice. The real world is a volatile place.)

In any case, Struble returned to Rodriguez's car, began to question a passenger, and then went back to his patrol car to run a records check on the passenger. He also radioed for a back-up officer – Officer Struble had apparently already decided to conduct a dog sniff of Rodriguez's car and he wanted another officer there for safety. With the second records check still negative, Struble went back to Rodriguez's car again, finished writing a warning ticket, and asked permission to walk his dog around the car. When Rodriguez declined that invitation as well, Struble (surprise!) ordered him from the car and did it anyway. And "surprise again!" — methamphetamine.

The Fourth Amendment law of traffic stops

Justice Ginsburg was a natural choice to write this decision (Chief Justice Roberts being in the majority), because she was the author of a prior opinion (*Arizona v. Johnson*) that allows officers to pat down, for safety reasons, individuals stopped for traffic violations, and also (in dictum) to question them during the stop about unrelated matters. But Justice Ginsburg has also expressed discomfort regarding drug-sniffing dogs, and she dissented in *Illinois v. Caballes*, arguing that dog sniffs ought not be routinely permitted during traffic stops; otherwise, "every traffic stop could become an occasion to call in the dogs, to the distress and embarrassment of the law-abiding population."

In today's decision, Justice Ginsburg wrote that the Court "adheres" to *Caballes*, but sticks to the "line drawn" there: a traffic stop "can become unlawful if it is prolonged beyond the time reasonably required to complete the [traffic stop] mission." In this case, because Officer Struble agreed that he had "got[ten] all the reasons for the stop out of the way" before conducting the dog sniff, the dog sniff violated *Caballes*'s Fourth Amendment rule. Justice Thomas's dissent says that "the majority accomplishes today what the *Caballes* dissent could not." But this is a shade too broad. *Caballes* allows a dog sniff if conducted *during* a reasonable traffic stop time; today's decision forbids it if it unnecessarily *prolongs* that time.

As both dissents (Thomas's and Alito's) note, this can be a razor-thin and sometimes arbitrary distinction – but such are the realities of a Fourth Amendment jurisprudence when the Framers gave us only one word – “unreasonable” – to define the scope of the amendment. The criminal procedure treatises are full of such thin, gray-area search-and-seizure distinctions – otherwise what would criminal law lawyers and professors do for a living? This morning the Court split six to three as to where the line should be. But with the swirl of popular culture concern regarding perceived police over-reaching, today's decision is hardly surprising.

Two small loose ends

This case may not be as big a “win” for Rodriguez as it looks, because the Court remands the case to examine whether there was, in fact, some “reasonable suspicion” of further crime that would have allowed the officers to further detain him. Two trial judges said there was not, but the Eighth Circuit did not address that question. Justices Thomas and Alito now say there was; the majority says that is “unnecessary.” Notably, Justice Anthony Kennedy – who otherwise joined Justice Thomas – did not join that aspect of Thomas's dissent.

It is also notable that Justice Alito closed his dissent with a footnote stating that “it remains true that [during a traffic stop] police may ask questions aimed at uncovering other criminal conduct.” It is not at all clear that the majority would agree with this reading; it says only that an officer “may conduct *certain* unrelated checks” during a stop, without discussing what limitations “certain” may imply. The majority also says that “on-scene investigation into other crimes ... detours from that mission” of traffic safety. The time limit of a “reasonable traffic stop” no doubt applies, and the issue of unrelated questioning is not otherwise part of the “holding” of the Court. Justice Alito's footnote suggestion is in the time-honored tradition of attempting to influence the understanding of a majority opinion by giving one's own reading in dissent.

Is the Court slowly walking away from *Place*?

Perhaps the most interesting aspect of today's decision is the further evidence that the Court is quietly distancing itself from its decision three decades ago in *United States v. Place*, holding that a specially trained dog sniff is not a “search” under the Fourth Amendment. That 1985 ruling is one of the more extreme extensions of the “reasonable expectation of privacy” test – which, while serving the liberal purpose of extending the Fourth Amendment to non-physical searches, has been extended on occasion to permit trespassing on open fields (including fenced-in wooded preserves) and searches of bank and phone records, without any Fourth Amendment constraint. More recently, however, the Court has recognized that privacy has some scope beyond “expectations” that the real world may compel us to abandon, and the Fourth Amendment may still have something to say about it. Thus the Court has more recently applied the Fourth Amendment to cell phones (last year's

decision in *Riley v. California*); images of residential interiors accessible by technology (*Kyllo v. United States* in 2001); and even one's own front porch (*Florida v. Jardines* in 2013 – another dog sniff case).

Today the majority described a dog sniff as “a measure aimed at detecting evidence.” That sounds like a “search” to me. Even the Justice Thomas noted in dissent that a “dog sniff ... is directed at uncovering” contraband. And recall that in *Jardines*, Justice Scalia noted that a dog sniff, even on a porch that is visible and generally accessible to the public, can be a search because it is directed at “obtaining information.”

Have you ever accidentally knocked something over and then embarrassedly just walked away rather than helping to clean it up, hoping that no one noticed? Sometimes the Supreme Court corrects its own mistakes this way – not overruling, but just quietly and slowly walking away, over years and various decisions, from a rationale that increasingly seems mistaken. As Justice Thomas's dissent noted today (not happily), the majority's “reasoning appears to come down to the principle that dogs are different.” Perhaps he is correct. But specially trained dogs do not seem different from thermal heat-imagers, GPS locators, or wiretapping, all of which have been ruled “searches” by the Court in the past. Their employment may or may not be reasonable – it depends on the circumstances. But they are all investigative tools. Perhaps Justice Thomas is actually noting that the Court is moving toward the realization that drug-sniffing dogs are actually no different from other “search” devices.

Posted in Merits Cases

Cases: *Rodriguez v. United States*

Recommended Citation: Rory Little, *Opinion analysis: Traffic stops can't last too long or go too far, and no extra dog sniffs!*, SCOTUSblog (Apr. 21, 2015, 7:55 PM), <https://www.scotusblog.com/2015/04/opinion-analysis-traffic-stops-cant-last-too-long-or-go-too-far-and-no-extra-dog-sniffs/>

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

RODRIGUEZ *v.* UNITED STATESCERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE EIGHTH CIRCUIT

No. 13–9972. Argued January 21, 2015—Decided April 21, 2015

Officer Struble, a K–9 officer, stopped petitioner Rodriguez for driving on a highway shoulder, a violation of Nebraska law. After Struble attended to everything relating to the stop, including, *inter alia*, checking the driver’s licenses of Rodriguez and his passenger and issuing a warning for the traffic offense, he asked Rodriguez for permission to walk his dog around the vehicle. When Rodriguez refused, Struble detained him until a second officer arrived. Struble then retrieved his dog, who alerted to the presence of drugs in the vehicle. The ensuing search revealed methamphetamine. Seven or eight minutes elapsed from the time Struble issued the written warning until the dog alerted.

Rodriguez was indicted on federal drug charges. He moved to suppress the evidence seized from the vehicle on the ground, among others, that Struble had prolonged the traffic stop without reasonable suspicion in order to conduct the dog sniff. The Magistrate Judge recommended denial of the motion. He found no reasonable suspicion supporting detention once Struble issued the written warning. Under Eighth Circuit precedent, however, he concluded that prolonging the stop by “seven to eight minutes” for the dog sniff was only a *de minimis* intrusion on Rodriguez’s Fourth Amendment rights and was for that reason permissible. The District Court then denied the motion to suppress. Rodriguez entered a conditional guilty plea and was sentenced to five years in prison. The Eighth Circuit affirmed. Noting that the seven or eight minute delay was an acceptable “*de minimis* intrusion on Rodriguez’s personal liberty,” the court declined to reach the question whether Struble had reasonable suspicion to continue Rodriguez’s detention after issuing the written warning.

Held:

Syllabus

1. Absent reasonable suspicion, police extension of a traffic stop in order to conduct a dog sniff violates the Constitution's shield against unreasonable seizures.

A routine traffic stop is more like a brief stop under *Terry v. Ohio*, 392 U. S. 1, than an arrest, see, e.g., *Arizona v. Johnson*, 555 U. S. 323, 330. Its tolerable duration is determined by the seizure's "mission," which is to address the traffic violation that warranted the stop, *Illinois v. Caballes*, 543 U. S. 405, 407 and attend to related safety concerns. Authority for the seizure ends when tasks tied to the traffic infraction are—or reasonably should have been—completed. The Fourth Amendment may tolerate certain unrelated investigations that do not lengthen the roadside detention, *Johnson*, 555 U. S., at 327–328 (questioning); *Caballes*, 543 U. S., at 406, 408 (dog sniff), but a traffic stop "become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission" of issuing a warning ticket, *id.*, at 407.

Beyond determining whether to issue a traffic ticket, an officer's mission during a traffic stop typically includes checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance. These checks serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly. See *Delaware v. Prouse*, 440 U. S. 643, 658–659. Lacking the same close connection to roadway safety as the ordinary inquiries, a dog sniff is not fairly characterized as part of the officer's traffic mission.

In concluding that the *de minimis* intrusion here could be offset by the Government's interest in stopping the flow of illegal drugs, the Eighth Circuit relied on *Pennsylvania v. Mimms*, 434 U. S. 106. The Court reasoned in *Mimms* that the government's "legitimate and weighty" interest in officer safety outweighed the "*de minimis*" additional intrusion of requiring a driver, lawfully stopped, to exit a vehicle, *id.*, at 110–111. The officer-safety interest recognized in *Mimms*, however, stemmed from the danger to the officer associated with the traffic stop itself. On-scene investigation into other crimes, in contrast, detours from the officer's traffic-control mission and therefore gains no support from *Mimms*.

The Government's argument that an officer who completes all traffic-related tasks expeditiously should earn extra time to pursue an unrelated criminal investigation is unpersuasive, for a traffic stop "prolonged beyond" the time in fact needed for the officer to complete his traffic-based inquiries is "unlawful," *Caballes*, 543 U. S., at 407. The critical question is not whether the dog sniff occurs before or after the officer issues a ticket, but whether conducting the sniff adds

Syllabus

time to the stop. Pp. 5–8.

2. The determination adopted by the District Court that detention for the dog sniff was not independently supported by individualized suspicion was not reviewed by the Eighth Circuit. That question therefore remains open for consideration on remand. P. 9.

741 F. 3d 905, vacated and remanded.

GINSBURG, J., delivered the opinion of the Court, in which ROBERTS, C. J., and SCALIA, BREYER, SOTOMAYOR, and KAGAN, JJ., joined. KENNEDY, J., filed a dissenting opinion. THOMAS, J., filed a dissenting opinion, in which ALITO, J., joined, and in which KENNEDY, J., joined as to all but Part III. ALITO, J., filed a dissenting opinion.

Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 13–9972

**DENNYS RODRIGUEZ, PETITIONER v.
UNITED STATES**

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

[April 21, 2015]

JUSTICE GINSBURG delivered the opinion of the Court.

In *Illinois v. Caballes*, 543 U. S. 405 (2005), this Court held that a dog sniff conducted during a lawful traffic stop does not violate the Fourth Amendment’s proscription of unreasonable seizures. This case presents the question whether the Fourth Amendment tolerates a dog sniff conducted after completion of a traffic stop. We hold that a police stop exceeding the time needed to handle the matter for which the stop was made violates the Constitution’s shield against unreasonable seizures. A seizure justified only by a police-observed traffic violation, therefore, “become[s] unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission” of issuing a ticket for the violation. *Id.*, at 407. The Court so recognized in *Caballes*, and we adhere to the line drawn in that decision.

I

Just after midnight on March 27, 2012, police officer Morgan Struble observed a Mercury Mountaineer veer slowly onto the shoulder of Nebraska State Highway 275 for one or two seconds and then jerk back onto the road.

Opinion of the Court

Nebraska law prohibits driving on highway shoulders, see Neb. Rev. Stat. §60-6,142 (2010), and on that basis, Struble pulled the Mountaineer over at 12:06 a.m. Struble is a K-9 officer with the Valley Police Department in Nebraska, and his dog Floyd was in his patrol car that night. Two men were in the Mountaineer: the driver, Dennys Rodriguez, and a front-seat passenger, Scott Pollman.

Struble approached the Mountaineer on the passenger's side. After Rodriguez identified himself, Struble asked him why he had driven onto the shoulder. Rodriguez replied that he had swerved to avoid a pothole. Struble then gathered Rodriguez's license, registration, and proof of insurance, and asked Rodriguez to accompany him to the patrol car. Rodriguez asked if he was required to do so, and Struble answered that he was not. Rodriguez decided to wait in his own vehicle.

After running a records check on Rodriguez, Struble returned to the Mountaineer. Struble asked passenger Pollman for his driver's license and began to question him about where the two men were coming from and where they were going. Pollman replied that they had traveled to Omaha, Nebraska, to look at a Ford Mustang that was for sale and that they were returning to Norfolk, Nebraska. Struble returned again to his patrol car, where he completed a records check on Pollman, and called for a second officer. Struble then began writing a warning ticket for Rodriguez for driving on the shoulder of the road.

Struble returned to Rodriguez's vehicle a third time to issue the written warning. By 12:27 or 12:28 a.m., Struble had finished explaining the warning to Rodriguez, and had given back to Rodriguez and Pollman the documents obtained from them. As Struble later testified, at that point, Rodriguez and Pollman "had all their documents back and a copy of the written warning. I got all the reason[s] for the stop out of the way[,] . . . took care of all

Opinion of the Court

the business.” App. 70.

Nevertheless, Struble did not consider Rodriguez “free to leave.” *Id.*, at 69–70. Although justification for the traffic stop was “out of the way,” *id.*, at 70, Struble asked for permission to walk his dog around Rodriguez’s vehicle. Rodriguez said no. Struble then instructed Rodriguez to turn off the ignition, exit the vehicle, and stand in front of the patrol car to wait for the second officer. Rodriguez complied. At 12:33 a.m., a deputy sheriff arrived. Struble retrieved his dog and led him twice around the Mountaineer. The dog alerted to the presence of drugs halfway through Struble’s second pass. All told, seven or eight minutes had elapsed from the time Struble issued the written warning until the dog indicated the presence of drugs. A search of the vehicle revealed a large bag of methamphetamine.

Rodriguez was indicted in the United States District Court for the District of Nebraska on one count of possession with intent to distribute 50 grams or more of methamphetamine, in violation of 21 U. S. C. §§841(a)(1) and (b)(1). He moved to suppress the evidence seized from his car on the ground, among others, that Struble had prolonged the traffic stop without reasonable suspicion in order to conduct the dog sniff.

After receiving evidence, a Magistrate Judge recommended that the motion be denied. The Magistrate Judge found no probable cause to search the vehicle independent of the dog alert. App. 100 (apart from “information given by the dog,” “Officer Struble had [no]thing other than a rather large hunch”). He further found that no reasonable suspicion supported the detention once Struble issued the written warning. He concluded, however, that under Eighth Circuit precedent, extension of the stop by “seven to eight minutes” for the dog sniff was only a *de minimis* intrusion on Rodriguez’s Fourth Amendment rights and was therefore permissible.

Opinion of the Court

The District Court adopted the Magistrate Judge's factual findings and legal conclusions and denied Rodriguez's motion to suppress. The court noted that, in the Eighth Circuit, "dog sniffs that occur within a short time following the completion of a traffic stop are not constitutionally prohibited if they constitute only de minimis intrusions." App. 114 (quoting *United States v. Alexander*, 448 F. 3d 1014, 1016 (CA8 2006)). The court thus agreed with the Magistrate Judge that the "7 to 10 minutes" added to the stop by the dog sniff "was not of constitutional significance." App. 114. Impelled by that decision, Rodriguez entered a conditional guilty plea and was sentenced to five years in prison.

The Eighth Circuit affirmed. The "seven- or eight-minute delay" in this case, the opinion noted, resembled delays that the court had previously ranked as permissible. 741 F. 3d 905, 907 (2014). The Court of Appeals thus ruled that the delay here constituted an acceptable "*de minimis* intrusion on Rodriguez's personal liberty." *Id.*, at 908. Given that ruling, the court declined to reach the question whether Struble had reasonable suspicion to continue Rodriguez's detention after issuing the written warning.

We granted certiorari to resolve a division among lower courts on the question whether police routinely may extend an otherwise-completed traffic stop, absent reasonable suspicion, in order to conduct a dog sniff. 573 U. S. ____ (2014). Compare, *e.g.*, *United States v. Morgan*, 270 F. 3d 625, 632 (CA8 2001) (postcompletion delay of "well under ten minutes" permissible), with, *e.g.*, *State v. Baker*, 2010 UT 18, ¶13, 229 P. 3d 650, 658 (2010) ("[W]ithout additional reasonable suspicion, the officer must allow the seized person to depart once the purpose of the stop has concluded.").

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II

A seizure for a traffic violation justifies a police investigation of that violation. “[A] relatively brief encounter,” a routine traffic stop is “more analogous to a so-called ‘*Terry* stop’ . . . than to a formal arrest.” *Knowles v. Iowa*, 525 U. S. 113, 117 (1998) (quoting *Berkemer v. McCarty*, 468 U. S. 420, 439 (1984), in turn citing *Terry v. Ohio*, 392 U. S. 1 (1968)). See also *Arizona v. Johnson*, 555 U. S. 323, 330 (2009). Like a *Terry* stop, the tolerable duration of police inquiries in the traffic-stop context is determined by the seizure’s “mission”—to address the traffic violation that warranted the stop, *Caballes*, 543 U. S., at 407, and attend to related safety concerns, *infra*, at 6–7. See also *United States v. Sharpe*, 470 U. S. 675, 685 (1985); *Florida v. Royer*, 460 U. S. 491, 500 (1983) (plurality opinion) (“The scope of the detention must be carefully tailored to its underlying justification.”). Because addressing the infraction is the purpose of the stop, it may “last no longer than is necessary to effectuate th[at] purpose.” *Ibid.* See also *Caballes*, 543 U. S., at 407. Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed. See *Sharpe*, 470 U. S., at 686 (in determining the reasonable duration of a stop, “it [is] appropriate to examine whether the police diligently pursued [the] investigation”).

Our decisions in *Caballes* and *Johnson* heed these constraints. In both cases, we concluded that the Fourth Amendment tolerated certain unrelated investigations that did not lengthen the roadside detention. *Johnson*, 555 U. S., at 327–328 (questioning); *Caballes*, 543 U. S., at 406, 408 (dog sniff). In *Caballes*, however, we cautioned that a traffic stop “can become unlawful if it is prolonged beyond the time reasonably required to complete th[e] mission” of issuing a warning ticket. 543 U. S., at 407. And we repeated that admonition in *Johnson*: The seizure remains lawful only “so long as [unrelated] inquiries do

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not measurably extend the duration of the stop.” 555 U. S., at 333. See also *Muehler v. Mena*, 544 U. S. 93, 101 (2005) (because unrelated inquiries did not “exten[d] the time [petitioner] was detained[,] . . . no additional Fourth Amendment justification . . . was required”). An officer, in other words, may conduct certain unrelated checks during an otherwise lawful traffic stop. But contrary to JUSTICE ALITO’s suggestion, *post*, at 4, n. 2, he may not do so in a way that prolongs the stop, absent the reasonable suspicion ordinarily demanded to justify detaining an individual. But see *post*, at 1–2 (ALITO, J., dissenting) (premising opinion on the dissent’s own finding of “reasonable suspicion,” although the District Court reached the opposite conclusion, and the Court of Appeals declined to consider the issue).

Beyond determining whether to issue a traffic ticket, an officer’s mission includes “ordinary inquiries incident to [the traffic] stop.” *Caballes*, 543 U. S., at 408. Typically such inquiries involve checking the driver’s license, determining whether there are outstanding warrants against the driver, and inspecting the automobile’s registration and proof of insurance. See *Delaware v. Prouse*, 440 U. S. 648, 658–660 (1979). See also 4 W. LaFare, *Search and Seizure* §9.3(c), pp. 507–517 (5th ed. 2012). These checks serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly. See *Prouse*, 440 U. S., at 658–659; LaFare, *Search and Seizure* §9.3(c), at 516 (A “warrant check makes it possible to determine whether the apparent traffic violator is wanted for one or more previous traffic offenses.”).

A dog sniff, by contrast, is a measure aimed at “detect[ing] evidence of ordinary criminal wrongdoing.” *Indianapolis v. Edmond*, 531 U. S. 32, 40–41 (2000). See also *Florida v. Jardines*, 569 U. S. 1, ___–___ (2013) (slip op., at 7–8). Candidly, the Government acknowledged at

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oral argument that a dog sniff, unlike the routine measures just mentioned, is not an ordinary incident of a traffic stop. See Tr. of Oral Arg. 33. Lacking the same close connection to roadway safety as the ordinary inquiries, a dog sniff is not fairly characterized as part of the officer's traffic mission.

In advancing its *de minimis* rule, the Eighth Circuit relied heavily on our decision in *Pennsylvania v. Mimms*, 434 U. S. 106 (1977) (*per curiam*). See *United States v. \$404,905.00 in U. S. Currency*, 182 F. 3d 643, 649 (CA8 1999). In *Mimms*, we reasoned that the government's "legitimate and weighty" interest in officer safety outweighs the "*de minimis*" additional intrusion of requiring a driver, already lawfully stopped, to exit the vehicle. 434 U. S., at 110–111. See also *Maryland v. Wilson*, 519 U. S. 408, 413–415 (1997) (passengers may be required to exit vehicle stopped for traffic violation). The Eighth Circuit, echoed in JUSTICE THOMAS's dissent, believed that the imposition here similarly could be offset by the Government's "strong interest in interdicting the flow of illegal drugs along the nation's highways." *\$404,905.00 in U. S. Currency*, 182 F. 3d, at 649; see *post*, at 9.

Unlike a general interest in criminal enforcement, however, the government's officer safety interest stems from the mission of the stop itself. Traffic stops are "especially fraught with danger to police officers," *Johnson*, 555 U. S., at 330 (internal quotation marks omitted), so an officer may need to take certain negligibly burdensome precautions in order to complete his mission safely. Cf. *United States v. Holt*, 264 F. 3d 1215, 1221–1222 (CA10 2001) (*en banc*) (recognizing officer safety justification for criminal record and outstanding warrant checks), abrogated on other grounds as recognized in *United States v. Stewart*, 473 F. 3d 1265, 1269 (CA10 2007). On-scene investigation into other crimes, however, detours from that mission. See *supra*, at 6–7. So too do safety precau-

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tions taken in order to facilitate such detours. But cf. *post*, at 2–3 (ALITO, J., dissenting). Thus, even assuming that the imposition here was no more intrusive than the exit order in *Mimms*, the dog sniff could not be justified on the same basis. Highway and officer safety are interests different in kind from the Government’s endeavor to detect crime in general or drug trafficking in particular.

The Government argues that an officer may “incremental[ly]” prolong a stop to conduct a dog sniff so long as the officer is reasonably diligent in pursuing the traffic-related purpose of the stop, and the overall duration of the stop remains reasonable in relation to the duration of other traffic stops involving similar circumstances. Brief for United States 36–39. The Government’s argument, in effect, is that by completing all traffic-related tasks expeditiously, an officer can earn bonus time to pursue an unrelated criminal investigation. See also *post*, at 2–5 (THOMAS, J., dissenting) (embracing the Government’s argument). The reasonableness of a seizure, however, depends on what the police in fact do. See *Knowles*, 525 U. S., at 115–117. In this regard, the Government acknowledges that “an officer always has to be reasonably diligent.” Tr. of Oral Arg. 49. How could diligence be gauged other than by noting what the officer actually did and how he did it? If an officer can complete traffic-based inquiries expeditiously, then that is the amount of “time reasonably required to complete [the stop’s] mission.” *Caballes*, 543 U. S., at 407. As we said in *Caballes* and reiterate today, a traffic stop “prolonged beyond” that point is “unlawful.” *Ibid.* The critical question, then, is not whether the dog sniff occurs before or after the officer issues a ticket, as JUSTICE ALITO supposes, *post*, at 2–4, but whether conducting the sniff “prolongs”—*i.e.*, adds time to—“the stop,” *supra*, at 6.

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III

The Magistrate Judge found that detention for the dog sniff in this case was not independently supported by individualized suspicion, see App. 100, and the District Court adopted the Magistrate Judge's findings, see *id.*, at 112–113. The Court of Appeals, however, did not review that determination. But see *post*, at 1, 10–12 (THOMAS, J., dissenting) (resolving the issue, nevermind that the Court of Appeals left it unaddressed); *post*, at 1–2 (ALITO, J., dissenting) (upbraiding the Court for addressing the sole issue decided by the Court of Appeals and characterizing the Court's answer as “unnecessary” because the Court, instead, should have decided an issue the Court of Appeals did not decide). The question whether reasonable suspicion of criminal activity justified detaining Rodriguez beyond completion of the traffic infraction investigation, therefore, remains open for Eighth Circuit consideration on remand.

* * *

For the reasons stated, the judgment of the United States Court of Appeals for the Eighth Circuit is vacated, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

KENNEDY, J., dissenting

SUPREME COURT OF THE UNITED STATES

No. 13–9972

DENNYS RODRIGUEZ, PETITIONER *v.*
UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

[April 21, 2015]

JUSTICE KENNEDY, dissenting.

My join in JUSTICE THOMAS' dissenting opinion does not extend to Part III. Although the issue discussed in that Part was argued here, the Court of Appeals has not addressed that aspect of the case in any detail. In my view the better course would be to allow that court to do so in the first instance.

THOMAS, J., dissenting

SUPREME COURT OF THE UNITED STATES

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DENNYS RODRIGUEZ, PETITIONER *v.*
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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
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[April 21, 2015]

JUSTICE THOMAS, with whom JUSTICE ALITO joins, and with whom JUSTICE KENNEDY joins as to all but Part III, dissenting.

Ten years ago, we explained that “conducting a dog sniff [does] not change the character of a traffic stop that is lawful at its inception and otherwise executed in a reasonable manner.” *Illinois v. Caballes*, 543 U. S. 405, 408 (2005). The only question here is whether an officer executed a stop in a reasonable manner when he waited to conduct a dog sniff until after he had given the driver a written warning and a backup unit had arrived, bringing the overall duration of the stop to 29 minutes. Because the stop was reasonably executed, no Fourth Amendment violation occurred. The Court’s holding to the contrary cannot be reconciled with our decision in *Caballes* or a number of common police practices. It was also unnecessary, as the officer possessed reasonable suspicion to continue to hold the driver to conduct the dog sniff. I respectfully dissent.

I

The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U. S. Const., Amdt. 4. As the text indicates, and as we

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have repeatedly confirmed, “the ultimate touchstone of the Fourth Amendment is ‘reasonableness.’” *Brigham City v. Stuart*, 547 U. S. 398, 403 (2006). We have defined reasonableness “in objective terms by examining the totality of the circumstances,” *Ohio v. Robinette*, 519 U. S. 33, 39 (1996), and by considering “the traditional protections against unreasonable searches and seizures afforded by the common law at the time of the framing,” *Atwater v. Lago Vista*, 532 U. S. 318, 326 (2001) (internal quotation marks omitted). When traditional protections have not provided a definitive answer, our precedents have “analyzed a search or seizure in light of traditional standards of reasonableness by assessing, on the one hand, the degree to which it intrudes upon an individual’s privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests.” *Virginia v. Moore*, 553 U. S. 164, 171 (2008) (internal quotation marks omitted).

Although a traffic stop “constitutes a ‘seizure’ of ‘persons’ within the meaning of [the Fourth Amendment],” such a seizure is constitutionally “reasonable where the police have probable cause to believe that a traffic violation has occurred.” *Whren v. United States*, 517 U. S. 806, 809–810 (1996). But “a seizure that is lawful at its inception can violate the Fourth Amendment if its manner of execution unreasonably infringes interests protected by the Constitution.” *Caballes, supra*, at 407.

Because Rodriguez does not dispute that Officer Struble had probable cause to stop him, the only question is whether the stop was otherwise executed in a reasonable manner. See Brief for Appellant in No. 13–1176 (CA8), p. 4, n. 2. I easily conclude that it was. Approximately 29 minutes passed from the time Officer Struble stopped Rodriguez until his narcotics-detection dog alerted to the presence of drugs. That amount of time is hardly out of the ordinary for a traffic stop by a single officer of a vehi-

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cle containing multiple occupants even when no dog sniff is involved. See, e.g., *United States v. Ellis*, 497 F. 3d 606 (CA6 2007) (22 minutes); *United States v. Barragan*, 379 F. 3d 524 (CA8 2004) (approximately 30 minutes). During that time, Officer Struble conducted the ordinary activities of a traffic stop—he approached the vehicle, questioned Rodriguez about the observed violation, asked Pollman about their travel plans, ran serial warrant checks on Rodriguez and Pollman, and issued a written warning to Rodriguez. And when he decided to conduct a dog sniff, he took the precaution of calling for backup out of concern for his safety. See 741 F. 3d 905, 907 (CA8 2014); see also *Pennsylvania v. Mimms*, 434 U. S. 106, 110 (1977) (*per curiam*) (officer safety is a “legitimate and weighty” concern relevant to reasonableness).

As *Caballes* makes clear, the fact that Officer Struble waited until after he gave Rodriguez the warning to conduct the dog sniff does not alter this analysis. Because “the use of a well-trained narcotics-detection dog . . . generally does not implicate legitimate privacy interests,” 543 U. S., at 409, “conducting a dog sniff would not change the character of a traffic stop that is lawful at its inception and otherwise executed in a reasonable manner,” *id.*, at 408. The stop here was “lawful at its inception and otherwise executed in a reasonable manner.” *Ibid.* As in *Caballes*, “conducting a dog sniff [did] not change the character of [the] traffic stop,” *ibid.*, and thus no Fourth Amendment violation occurred.

II

Rather than adhere to the reasonableness requirement that we have repeatedly characterized as the “touchstone of the Fourth Amendment,” *Brigham City*, *supra*, at 403, the majority constructed a test of its own that is inconsistent with our precedents.

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A

The majority's rule requires a traffic stop to "en[d] when tasks tied to the traffic infraction are—or reasonably should have been—completed." *Ante*, at 5. "If an officer can complete traffic-based inquiries expeditiously, then that is the amount of time reasonably required to complete the stop's mission" and he may hold the individual no longer. *Ante*, at 8 (internal quotation marks and alterations omitted). The majority's rule thus imposes a one-way ratchet for constitutional protection linked to the characteristics of the individual officer conducting the stop: If a driver is stopped by a particularly efficient officer, then he will be entitled to be released from the traffic stop after a shorter period of time than a driver stopped by a less efficient officer. Similarly, if a driver is stopped by an officer with access to technology that can shorten a records check, then he will be entitled to be released from the stop after a shorter period of time than an individual stopped by an officer without access to such technology.

I "cannot accept that the search and seizure protections of the Fourth Amendment are so variable and can be made to turn upon such trivialities." *Whren*, 517 U. S., at 815 (citations omitted). We have repeatedly explained that the reasonableness inquiry must not hinge on the characteristics of the individual officer conducting the seizure. We have held, for example, that an officer's state of mind "does not invalidate [an] action taken as long as the circumstances, viewed objectively, justify that action." *Id.*, at 813 (internal quotation marks omitted). We have spurned theories that would make the Fourth Amendment "change with local law enforcement practices." *Moore, supra*, at 172. And we have rejected a rule that would require the offense establishing probable cause to be "closely related to" the offense identified by the arresting officer, as such a rule would make "the constitutionality of an arrest . . . vary from place to place and from time to time, depending

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on whether the arresting officer states the reason for the detention and, if so, whether he correctly identifies a general class of offense for which probable cause exists.” *Devenpeck v. Alford*, 543 U. S. 146, 154 (2004) (internal quotation marks and citation omitted). In *Devenpeck*, a unanimous Court explained: “An arrest made by a knowledgeable, veteran officer would be valid, whereas an arrest made by a rookie *in precisely the same circumstances* would not. We see no reason to ascribe to the Fourth Amendment such arbitrarily variable protection.” *Ibid.*

The majority’s logic would produce similarly arbitrary results. Under its reasoning, a traffic stop made by a rookie could be executed in a reasonable manner, whereas the same traffic stop made by a knowledgeable, veteran officer *in precisely the same circumstances* might not, if in fact his knowledge and experience made him capable of completing the stop faster. We have long rejected interpretations of the Fourth Amendment that would produce such haphazard results, and I see no reason to depart from our consistent practice today.

B

As if that were not enough, the majority also limits the duration of the stop to the time it takes the officer to complete a narrow category of “traffic-based inquiries.” *Ante*, at 8. According to the majority, these inquiries include those that “serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly.” *Ante*, at 6. Inquiries directed to “detecting evidence of ordinary criminal wrongdoing” are not traffic-related inquiries and thus cannot count toward the overall duration of the stop. *Ibid.* (internal quotation marks and alteration omitted).

The combination of that definition of traffic-related inquiries with the majority’s officer-specific durational limit produces a result demonstrably at odds with our

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decision in *Caballes*. *Caballes* expressly anticipated that a traffic stop could be *reasonably* prolonged for officers to engage in a dog sniff. We explained that no Fourth Amendment violation had occurred in *Caballes*, where the “duration of the stop . . . was entirely justified by the traffic offense and the ordinary inquiries incident to such a stop,” but suggested a different result might attend a case “involving a dog sniff that occurred during an *unreasonably* prolonged traffic stop.” 543 U. S., at 407–408 (emphasis added). The dividing line was whether the overall duration of the stop exceeded “the time reasonably required to complete th[e] mission,” *id.*, at 407, not, as the majority suggests, whether the duration of the stop “in fact” exceeded the time necessary to complete the traffic-related inquiries, *ante*, at 8.

The majority’s approach draws an artificial line between dog sniffs and other common police practices. The lower courts have routinely confirmed that warrant checks are a constitutionally permissible part of a traffic stop, see, e.g., *United States v. Simmons*, 172 F. 3d 775, 778 (CA11 1999); *United States v. Mendez*, 118 F. 3d 1426, 1429 (CA10 1997); *United States v. Shabazz*, 993 F. 2d 431, 437 (CA5 1993), and the majority confirms that it finds no fault in these measures, *ante*, at 6. Yet its reasoning suggests the opposite. Such warrant checks look more like they are directed to “detecting evidence of ordinary criminal wrongdoing” than to “ensuring that vehicles on the road are operated safely and responsibly.” *Ante*, at 6 (internal quotation marks and alteration omitted). Perhaps one could argue that the existence of an outstanding warrant might make a driver less likely to operate his vehicle safely and responsibly on the road, but the same could be said about a driver in possession of contraband. A driver confronted by the police in either case might try to flee or become violent toward the officer. But under the majority’s analysis, a dog sniff, which is directed at uncov-

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ering that problem, is not treated as a traffic-based inquiry. Warrant checks, arguably, should fare no better. The majority suggests that a warrant check is an ordinary inquiry incident to a traffic stop because it can be used “to determine whether the apparent traffic violator is wanted for one or more previous traffic offenses.” *Ante*, at 6 (quoting 4 W. LaFare, *Search and Seizure* §9.3(c), p. 516 (5th ed. 2012)). But as the very treatise on which the majority relies notes, such checks are a “manifest[ation of] the ‘war on drugs’ motivation so often underlying [routine traffic] stops,” and thus are very much like the dog sniff in this case. *Id.*, §9.3(c), at 507–508.

Investigative questioning rests on the same basis as the dog sniff. “Asking questions is an essential part of police investigations.” *Hiibel v. Sixth Judicial Dist. Court of Nev., Humboldt Cty.*, 542 U. S. 177, 185 (2004). And the lower courts have routinely upheld such questioning during routine traffic stops. See, e.g., *United States v. Rivera*, 570 F. 3d 1009, 1013 (CA8 2009); *United States v. Childs*, 277 F. 3d 947, 953–954 (CA7 2002). The majority’s reasoning appears to allow officers to engage in *some* questioning aimed at detecting evidence of ordinary criminal wrongdoing. *Ante*, at 5. But it is hard to see how such inquiries fall within the “seizure’s ‘mission’ [of] address[ing] the traffic violation that warranted the stop,” or “attend[ing] to related safety concerns.” *Ibid.* Its reasoning appears to come down to the principle that dogs are different.

C

On a more fundamental level, the majority’s inquiry elides the distinction between traffic stops based on probable cause and those based on reasonable suspicion. Probable cause is *the* “traditional justification” for the seizure of a person. *Whren*, 517 U. S., at 817 (emphasis deleted); see also *Dunaway v. New York*, 442 U. S. 200,

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207–208 (1979). This Court created an exception to that rule in *Terry v. Ohio*, 392 U. S. 1 (1968), permitting “police officers who suspect criminal activity to make limited intrusions on an individual’s personal security based on less than probable cause,” *Michigan v. Summers*, 452 U. S. 692, 698 (1981). Reasonable suspicion is the justification for such seizures. *Prado Navarette v. California*, 572 U. S. ___, ___ (2014) (slip op., at 3).

Traffic stops can be initiated based on probable cause or reasonable suspicion. Although the Court has commented that a routine traffic stop is “more analogous to a so-called ‘*Terry* stop’ than to a formal arrest,” it has rejected the notion “that a traffic stop supported by probable cause may not exceed the bounds set by the Fourth Amendment on the scope of a *Terry* stop.” *Berkemer v. McCarty*, 468 U. S. 420, 439, and n. 29 (1984) (citation omitted).

Although all traffic stops must be executed reasonably, our precedents make clear that traffic stops justified by reasonable suspicion are subject to additional limitations that those justified by probable cause are not. A traffic stop based on reasonable suspicion, like all *Terry* stops, must be “justified at its inception” and “reasonably related in scope to the circumstances which justified the interference in the first place.” *Hiibel*, 542 U. S., at 185 (internal quotation marks omitted). It also “cannot continue for an excessive period of time or resemble a traditional arrest.” *Id.*, at 185–186 (citation omitted). By contrast, a stop based on probable cause affords an officer considerably more leeway. In such seizures, an officer may engage in a warrantless arrest of the driver, *Atwater*, 532 U. S., at 354, a warrantless search incident to arrest of the driver, *Riley v. California*, 573 U. S. ___, ___ (2014) (slip op., at 5), and a warrantless search incident to arrest of the vehicle if it is reasonable to believe evidence relevant to the crime of arrest might be found there, *Arizona v. Gant*, 556 U. S. 332, 335 (2009).

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The majority casually tosses this distinction aside. It asserts that the traffic stop in this case, which was undisputedly initiated on the basis of probable cause, can last no longer than is in fact necessary to effectuate the mission of the stop. *Ante*, at 8. And, it assumes that the mission of the stop was merely to write a traffic ticket, rather than to consider making a custodial arrest. *Ante*, at 5. In support of that durational requirement, it relies primarily on cases involving *Terry* stops. See *ante*, at 5–7 (citing *Arizona v. Johnson*, 555 U. S. 323 (2009) (analyzing “stop and frisk” of *passenger* in a vehicle temporarily seized for a traffic violation); *United States v. Sharpe*, 470 U. S. 675 (1985) (analyzing seizure of individuals based on suspicion of marijuana trafficking); *Florida v. Royer*, 460 U. S. 491 (1983) (plurality opinion) (analyzing seizure of man walking through airport on suspicion of narcotics activity)).

The *only* case involving a traffic stop based on probable cause that the majority cites for its rule is *Caballes*. But, that decision provides no support for today’s restructuring of our Fourth Amendment jurisprudence. In *Caballes*, the Court made clear that, in the context of a traffic stop supported by probable cause, “a dog sniff would not change the character of a traffic stop that is lawful at its inception and otherwise executed in a reasonable manner.” 543 U. S., at 408. To be sure, *the dissent* in *Caballes* would have “appl[ied] *Terry*’s reasonable-relation test . . . to determine whether the canine sniff impermissibly expanded the scope of the initially valid seizure of *Caballes*.” *Id.*, at 420 (GINSBURG, J., dissenting). But even it conceded that the *Caballes* majority had “implicitly [rejected] the application of *Terry* to a traffic stop converted, by calling in a dog, to a drug search.” *Id.*, at 421.

By strictly limiting the tasks that define the durational scope of the traffic stop, the majority accomplishes today what the *Caballes* dissent could not: strictly limiting the

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scope of an officer's activities during a traffic stop justified by probable cause. In doing so, it renders the difference between probable cause and reasonable suspicion virtually meaningless in this context. That shift is supported neither by the Fourth Amendment nor by our precedents interpreting it. And, it results in a constitutional framework that lacks predictability. Had Officer Struble arrested, handcuffed, and taken Rodriguez to the police station for his traffic violation, he would have complied with the Fourth Amendment. See *Atwater, supra*, at 354–355. But because he made Rodriguez wait for seven or eight extra minutes until a dog arrived, he evidently committed a constitutional violation. Such a view of the Fourth Amendment makes little sense.

III

Today's revision of our Fourth Amendment jurisprudence was also entirely unnecessary. Rodriguez suffered no Fourth Amendment violation here for an entirely independent reason: Officer Struble had reasonable suspicion to continue to hold him for investigative purposes. Our precedents make clear that the Fourth Amendment permits an officer to conduct an investigative traffic stop when that officer has "a particularized and objective basis for suspecting the particular person stopped of criminal activity." *Prado Navarette*, 572 U. S., at ___ (slip op., at 3) (internal quotation marks omitted). Reasonable suspicion is determined by looking at "the whole picture," *ibid.*, taking into account "the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act," *Ornelas v. United States*, 517 U.S. 690, 695 (1996) (internal quotation marks omitted).

Officer Struble testified that he first became suspicious that Rodriguez was engaged in criminal activity for a number of reasons. When he approached the vehicle, he

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smelled an “overwhelming odor of air freshener coming from the vehicle,” which is, in his experience, “a common attempt to conceal an odor that [people] don’t want . . . to be smelled by the police.” App. 20–21. He also observed, upon approaching the front window on the passenger side of the vehicle, that Rodriguez’s passenger, Scott Pollman, appeared nervous. Pollman pulled his hat down low, puffed nervously on a cigarette, and refused to make eye contact with him. The officer thought he was “more nervous than your typical passenger” who “do[esn’t] have anything to worry about because [t]hey didn’t commit a [traffic] violation.” *Id.*, at 34.

Officer Struble’s interactions with the vehicle’s occupants only increased his suspicions. When he asked Rodriguez why he had driven onto the shoulder, Rodriguez claimed that he swerved to avoid a pothole. But that story could not be squared with Officer Struble’s observation of the vehicle slowly driving off the road before being jerked back onto it. And when Officer Struble asked Pollman where they were coming from and where they were going, Pollman told him they were traveling from Omaha, Nebraska, back to Norfolk, Nebraska, after looking at a vehicle they were considering purchasing. Pollman told the officer that he had neither seen pictures of the vehicle nor confirmed title before the trip. As Officer Struble explained, it “seemed suspicious” to him “to drive . . . approximately two hours . . . late at night to see a vehicle sight unseen to possibly buy it,” *id.*, at 26, and to go from Norfolk to Omaha to look at it because “[u]sually people leave Omaha to go get vehicles, not the other way around” due to higher Omaha taxes, *id.*, at 65.

These facts, taken together, easily meet our standard for reasonable suspicion. “[N]ervous, evasive behavior is a pertinent factor in determining reasonable suspicion,” *Illinois v. Wardlow*, 528 U. S. 119, 124 (2000), and both vehicle occupants were engaged in such conduct. The

THOMAS, J., dissenting

officer also recognized heavy use of air freshener, which, in his experience, indicated the presence of contraband in the vehicle. “[C]ommonsense judgments and inferences about human behavior” further support the officer’s conclusion that Pollman’s story about their trip was likely a cover story for illegal activity. *Id.*, at 125. Taking into account all the relevant facts, Officer Struble possessed reasonable suspicion of criminal activity to conduct the dog sniff.

Rodriguez contends that reasonable suspicion cannot exist because each of the actions giving rise to the officer’s suspicions could be entirely innocent, but our cases easily dispose of that argument. Acts that, by themselves, might be innocent can, when taken together, give rise to reasonable suspicion. *United States v. Arvizu*, 534 U. S. 266, 274–275 (2002). *Terry* is a classic example, as it involved two individuals repeatedly walking back and forth, looking into a store window, and conferring with one another as well as with a third man. 392 U. S., at 6. The Court reasoned that this “series of acts, each of them perhaps innocent in itself, . . . together warranted further investigation,” *id.*, at 22, and it has reiterated that analysis in a number of cases, see, e.g., *Arvizu*, *supra*, at 277; *United States v. Sokolow*, 490 U. S. 1, 9–10 (1989). This one is no different.

* * *

I would conclude that the police did not violate the Fourth Amendment here. Officer Struble possessed probable cause to stop Rodriguez for driving on the shoulder, and he executed the subsequent stop in a reasonable manner. Our decision in *Caballes* requires no more. The majority’s holding to the contrary is irreconcilable with *Caballes* and a number of other routine police practices, distorts the distinction between traffic stops justified by probable cause and those justified by reasonable suspicion, and abandons reasonableness as the touchstone of the Fourth Amendment. I respectfully dissent.

ALITO, J., dissenting

SUPREME COURT OF THE UNITED STATES

No. 13–9972

DENNYS RODRIGUEZ, PETITIONER *v.*
UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE EIGHTH CIRCUIT

[April 21, 2015]

JUSTICE ALITO, dissenting.

This is an unnecessary,¹ impractical, and arbitrary decision. It addresses a purely hypothetical question: whether the traffic stop in this case *would be* unreasonable if the police officer, prior to leading a drug-sniffing dog around the exterior of petitioner’s car, did not already have reasonable suspicion that the car contained drugs. In fact, however, the police officer *did have* reasonable suspicion, and, as a result, the officer was justified in detaining the occupants for the short period of time (seven or eight minutes) that is at issue.

The relevant facts are not in dispute. Officer Struble, who made the stop, was the only witness at the suppression hearing, and his testimony about what happened was not challenged. Defense counsel argued that the facts recounted by Officer Struble were insufficient to establish reasonable suspicion, but defense counsel did not dispute those facts or attack the officer’s credibility. Similarly, the Magistrate Judge who conducted the hearing did not question the officer’s credibility. And as JUSTICE THOMAS’s opinion shows, the facts recounted by Officer Struble “easily meet our standard for reasonable suspicion.” *Ante*, at 11 (dissenting opinion); see also, *e.g.*, *United*

¹See Brief in Opposition 11–14.

ALITO, J., dissenting

States v. Carpenter, 462 F. 3d 981, 986–987 (CA8 2006) (finding reasonable suspicion for a dog sniff based on implausible travel plans and nervous conduct); *United States v. Ludwig*, 641 F. 3d 1243, 1248–1250 (CA10 2011) (finding reasonable suspicion for a dog sniff where, among other things, the officer smelled “strong masking odors,” the defendant’s “account of his travel was suspect,” and the defendant “was exceptionally nervous throughout his encounter”).

Not only does the Court reach out to decide a question not really presented by the facts in this case, but the Court’s answer to that question is arbitrary. The Court refuses to address the real Fourth Amendment question: whether the stop was unreasonably prolonged. Instead, the Court latches onto the fact that Officer Struble delivered the warning prior to the dog sniff and proclaims that the authority to detain based on a traffic stop ends when a citation or warning is handed over to the driver. The Court thus holds that the Fourth Amendment was violated, not because of the length of the stop, but simply because of the sequence in which Officer Struble chose to perform his tasks.

This holding is not only arbitrary; it is perverse since Officer Struble chose that sequence for the purpose of protecting his own safety and possibly the safety of others. See App. 71–72. Without prolonging the stop, Officer Struble could have conducted the dog sniff while one of the tasks that the Court regards as properly part of the traffic stop was still in progress, but that sequence would have entailed unnecessary risk. At approximately 12:19 a.m., after collecting Pollman’s driver’s license, Officer Struble did two things. He called in the information needed to do a records check on Pollman (a step that the Court recognizes was properly part of the traffic stop), and he requested that another officer report to the scene. Officer Struble had decided to perform a dog sniff but did not

ALITO, J., dissenting

want to do that without another officer present. When occupants of a vehicle who know that their vehicle contains a large amount of illegal drugs see that a drug-sniffing dog has alerted for the presence of drugs, they will almost certainly realize that the police will then proceed to search the vehicle, discover the drugs, and make arrests. Thus, it is reasonable for an officer to believe that an alert will increase the risk that the occupants of the vehicle will attempt to flee or perhaps even attack the officer. See, e.g., *United States v. Dawdy*, 46 F. 3d 1427, 1429 (CA8 1995) (recounting scuffle between officer and defendant after drugs were discovered).

In this case, Officer Struble was concerned that he was outnumbered at the scene, and he therefore called for backup and waited for the arrival of another officer before conducting the sniff. As a result, the sniff was not completed until seven or eight minutes after he delivered the warning. But Officer Struble could have proceeded with the dog sniff while he was waiting for the results of the records check on Pollman and before the arrival of the second officer. The drug-sniffing dog was present in Officer Struble's car. If he had chosen that riskier sequence of events, the dog sniff would have been completed before the point in time when, according to the Court's analysis, the authority to detain for the traffic stop ended. Thus, an action that would have been lawful had the officer made the *unreasonable* decision to risk his life became unlawful when the officer made the *reasonable* decision to wait a few minutes for backup. Officer Struble's error—apparently—was following prudent procedures motivated by legitimate safety concerns. The Court's holding therefore makes no practical sense. And nothing in the Fourth Amendment, which speaks of *reasonableness*, compels this arbitrary line.

The rule that the Court adopts will do little good going

ALITO, J., dissenting

forward.² It is unlikely to have any appreciable effect on the length of future traffic stops. Most officers will learn the prescribed sequence of events even if they cannot fathom the reason for that requirement. (I would love to be the proverbial fly on the wall when police instructors teach this rule to officers who make traffic stops.)

For these reasons and those set out in JUSTICE THOMAS's opinion, I respectfully dissent.

²It is important to note that the Court's decision does not affect procedures routinely carried out during traffic stops, including "checking the driver's license, determining whether there are outstanding warrants against the driver, and inspecting the automobile's registration and proof of insurance." *Ante*, at 6. And the Court reaffirms that police "may conduct certain unrelated checks during an otherwise lawful traffic stop." *Ibid*. Thus, it remains true that police may ask questions aimed at uncovering other criminal conduct and may order occupants out of their car during a valid stop. See *Arizona v. Johnson*, 555 U. S. 323, 333 (2009); *Maryland v. Wilson*, 519 U. S. 408, 414–415 (1997); *Pennsylvania v. Mimms*, 434 U. S. 106, 111 (1977) (*per curiam*).

Lee, Katherine

From: Charles Clarke <cfclarke@att.net>
Sent: Wednesday, April 13, 2022 5:13 PM
To: Lee, Katherine
Subject: Berkeley Tear Gas Ban
Attachments: Clarke Memo Tear Gas Ban 04.13.2022.pdf

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear Madame Director,

Please forward this e-mail to the Police Accountability Board.

The Police Accountability Board's March 30, 2022, discussion of the City Council's ban on tear gas was woefully underinformed about past actions and inactions by the City Council and Police Review Commission.

I attach a memorandum, "Documentary History of the City of Berkeley Tear Gas Ban," to supply details omitted from the Board's discussion of the Impact Statements submitted by the Police Department, with recommendations toward rectifying past inaction by various government bodies.

Sincerely,

Charles Clarke
Resident, City Council District 6

Documentary History of the City of Berkeley Tear Gas Ban
Memorandum from Charles Clarke, a resident of Berkeley, April 13, 2022
To the Police Accountability Board

At the June 9, 2020, Council special meeting the City Council established City policy to, among other things, prohibit the use of tear gas in Berkeley by the Berkeley Police Department (BPD) or any outside agency rendering mutual aid assistance.¹

At the July 23, 2020, Council special meeting BPD Chief Andrew Greenwood observed that the tear gas ban could inhibit outside agencies from rendering any mutual aid with the possible consequence:

"Reducing or eliminating our ability to utilize mutual aid severely compromises our ability to safeguard the city. If our City is perceived as not being able to manage community safety, one could conceive that the City could become a target for the opportunistic placement of federal resources here."²

The president of the Berkeley Police Association (BPA) echoed a related concern in an October 2020 e-mail (attached) to the City Council in advance of possible unrest following the 2020 Presidential election.³

Second, Chief Greenwood also proposed language to be inserted into the Policy 300 Use of Force section concerning Restraint and Control Devices:⁴

"Tear gas may be used by trained personnel in the conduct of Special Response Team operations, e.g. during a barricaded subject operation, when it is objectively reasonable and objectively necessary to protect people from the risk of serious bodily injury or death."⁵

¹ Annotated Agenda, Berkeley City Council special meeting, June 9, 2020, 4:00 PM, p. 5 of 13
https://www.cityofberkeley.info/Clerk/City_Council/2020/06_June/Documents/06-09_Annotated_Agenda_4pm_pdf.aspx

² A.R. Greenwood, Chief of Police, "Companion Report: Police Review Commission Recommendation on a Revised Berkeley Police Department Policy 300, Use of Force," p. 10 of 15
[https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-23_Supp_2_Reports_Item_3_\(6pm\)_Sup_Police_pdf.aspx](https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/2020-07-23_Supp_2_Reports_Item_3_(6pm)_Sup_Police_pdf.aspx)

³ BPD Sgt. Emily Murphy to All Council, "Berkeley Police Association Request-Chemical Agents," October 22, 2020, in Council Communications – November 10, 2020, p. 253 of 268
<https://www.cityofberkeley.info/recordsonline/api/Document/AbTXQ5FxFJTtKOVHB4jKg74roHc6QdmeLw8kAbXCVEEm0CECITIWm9AOHx9bEN4E3H25W6hd7v9cUNMaARMBH70%3D/>

⁴ Berkeley Police Department Policy 300 Use of Force
https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/Use_of_Force.pdf

⁵ Greenwood, supra n. 2, p. 9 of 15.

At the July 23, 2020, Council special meeting the City Council referred to the Police Review Commission and the Public Safety policy committee "the issue of providing an allowance for the Special Response Team to use tear gas in certain circumstances."⁶

At the September 23, 2020, Police Review Commission (PRC) meeting the PRC forwarded for City Council consideration the following proposed exception in Policy 303 Control Devices and Techniques⁷

303.6 TEAR GAS GUIDELINES

Tear gas may only be used by trained members of the Special Response Team during SRT tactical operations (e.g., during barricaded subject operations or responding to armed attacks during an SRT operation) in accordance with Policy 300 to protect people from the risk of serious bodily injury or death.

The above paragraph notwithstanding, as per City Council policy (June 9, 2020), the use of tear gas by any employees of the Berkeley Police Department, including the Special Response Team, is prohibited in crowd control and crowd management situations.

When practicable, fire personnel should be alerted or summoned to the scene prior to deployment of tear gas by SRT, in order to control any fires and to assist in providing medical aid or gas evacuation if needed.

Moved/Second (Perezvelez/Leftwich) Motion Carried
Ayes: Calavita, Chang, Leftwich, Mikiten, Perezvelez, and Ramsey.
Noes: Mizell Abstain: Allamby Absent: None

Evidently the City Council has never considered the PRC's suggested exception. The present writer has searched the Annotated Agendas of the Council Public Safety committee⁸ and Council Agenda & Rules committee⁹ since September 23, 2020, but found no item embodying the PRC's suggested exception.

⁶ Annotated Agenda, Berkeley City Council special meeting, July 23, 2020, 6:00 PM, p. 5 of 7
https://www.cityofberkeley.info/Clerk/City_Council/2020/07_Jul/Documents/07-23_Annotated_Agenda_6pm_pdf.aspx

⁷ Minutes, Police Review Commission regular meeting, September 23, 2020, pp. 3-4
https://www.cityofberkeley.info/uploadedFiles/Police_Review_Commission/Commissions/2020/2020-09-23%20approved%20minutes.pdf

⁸ City Council: Policy Committee: Public Safety
https://www.cityofberkeley.info/Clerk/Home/Policy_Committee_Public_Safety.aspx

⁹ City Council: Policy Committee: Agenda & Rules
https://www.cityofberkeley.info/Clerk/City_Council/Policy_Committee_Agenda_Rules.aspx

Equally evidently BPD has not updated the Policy 303 Control Devices and Techniques¹⁰ section on Tear Gas Guidelines (303.6) since its initial publication on October 12, 2018 – before the June 2020 tear gas ban.

Recommendations

1. BPD should update Policy 303 to conform with the June 9, 2020, City Council policy on tear gas, Assembly Bill 48 (2021-2022),¹¹ Assembly Bill 481 (2021-2022),¹² and other applicable federal, state, and local law.

2. In accordance with the Council's July 23, 2020, referral the Public Safety committee should agendaize and discuss the PRC's September 23, 2020, suggested exception to the tear gas policy for either (a) referral to the Police Accountability Board or (b) consideration for City Council approval.

3. In accordance with the City Charter, the Police Accountability Board (PAB), as the successor agency to the PRC,¹³ should review the policy for its implications on the terms and conditions of mutual aid,¹⁴ including the possibility that no mutual aid will be rendered to the Berkeley Police Department.

¹⁰ Berkeley Police Department Policy 303 Control Devices and Techniques
[https://www.cityofberkeley.info/uploadedFiles/Police/Level_3 -
General/303%20Control Devices and Techniques.pdf](https://www.cityofberkeley.info/uploadedFiles/Police/Level_3_-_General/303%20Control_Devices_and_Techniques.pdf)

¹¹ Assembly Bill No. 48 (Gonzalez), Law enforcement: use of force
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB48

¹² Assembly Bill No. 481 (Chiu), Law enforcement and state agencies: military equipment: funding, acquisition, and use
https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=202120220AB481

¹³ Charter of the City of Berkeley Section 125, Article XVIII Police Accountability Board and Director of Police Accountability, Section 125(2)(e)
[https://www.cityofberkeley.info/uploadedFiles/Office_of_the_Director_of_Police_Accountability/PAB
oard/PAB%20Charter%20Article%20XVIII.pdf](https://www.cityofberkeley.info/uploadedFiles/Office_of_the_Director_of_Police_Accountability/PABoard/PAB%20Charter%20Article%20XVIII.pdf)

¹⁴ Charter Section 125, supra n. 13, Section 125(3)(a)(2).

Benado, Tony

From: Emily Murphy <berkeleypoliceassocmurphy@gmail.com>
Sent: Thursday, October 22, 2020 4:20 PM
To: All Council
Cc: Williams-Ridley, Dee; Greenwood, Andrew; Bellow, LaTanya; Brown, Farimah F.
Subject: Berkeley Police Association Request-Chemical Agents

WARNING: This email originated outside of City of Berkeley.
DO NOT CLICK ON links or attachments unless you trust the sender and know the content is safe.

Re: Chemical Agents Carve Out Language

Dear Mayor Arreguin and Members of the City Council,

As November 3rd approaches, so does the very real public safety threat of violent civil unrest in the lead up to the election and its aftermath.

I write as President of the Berkeley Police Association (BPA) with an appeal that you take immediate action to ensure our community and officers are safeguarded in the event of violent civil unrest. The BPA is concerned that if extreme violence erupts in the context of peaceful demonstrations that Berkeley's residents, officers on the front lines, and critical infrastructure will be at risk under our current chemical agents policy. I respectfully ask that you carve out a very narrow yet important exception that permits the use of chemical agents where there is an imminent threat of physical bodily harm or significant destruction of property and where other techniques have failed us or are not reasonably likely to succeed.

The Berkeley Police Department has a long and admirable track record of safeguarding the right of community members to engage in free speech through peaceful protest. There is no city in the United States that has been more accommodating to free speech than Berkeley. Keep in mind that we've only needed to deploy tear gas twice in the last two decades and that we would never use tear gas on peaceful protestors.

Please know that all of our officers worked under a long standing policy which permitted discriminate use of tear gas, smoke and pepper spray under very limited and exigent circumstances. Our current training is geared around responding to and preventing violence with tear gas as a final option to create a buffer of time and space. That training loses its practical application and relevance without access to tear gas. Currently there is no clear plan on how to protect the community if we get to a point where tear gas would be required. Mutual aid is offered as a solution but understand that it is likely that regional mutual aid will be pulled in many directions and we could be on our own.

Mayor Arreguin - you and City Council are responsible for the safety of the community and the safety of our officers. I urge you to put that responsibility first and foremost today. We will work hard and do what we can to keep Berkeley safe; however, I am concerned that we cannot adequately protect the community under our current chemical agents policy.

Sincerely,

Sergeant Emily Murphy
President, Berkeley Police Association

Lee, Katherine

From: Charles Clarke <cfclarke@att.net>
Sent: Sunday, April 10, 2022 3:24 PM
To: All Council
Cc: Williams-Ridley, Dee; Brown, Farimah F.; Louis, Jennifer A.; Lee, Katherine; Wong, Jenny; City Clerk
Subject: In Favor of Flex Team for Problem-Oriented Policing - Item 27, 4/12/2022 Regular Meeting
Attachments: Josh Buswell-Charkow Flex Team comment 03.28.2022.m4a

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Dear City Officials,

At the March 28, 2022, Agenda & Rules policy committee meeting Josh Buswell-Charkow, a resident of District 2, spoke in support of Councilmember Taplin's Flex Team proposal, now Item 27 on the April 12, 2022, regular meeting agenda.

With Mr. Buswell-Charkow's permission I have attached the audio file and transcript of his comment for your consideration.

I echo Mr. Buswell-Charkow's support for the Flex Team proposal and urge you to approve it. Please enable our Police Department to keep Berkeley's residents safe.

Sincerely,

Charles Clarke
Resident, Berkeley City Council District 6

Comment by Josh Buswell-Charkow at Agenda & Rules policy committee, Thursday, March 28, 2022.

Yeah, hi this is Josh Buswell-Charkow from District 2, also calling in, in support of keeping Item 27 on the Consent calendar.

I just can't tell you how infuriating it is that I gotta take time out of my work day to continue to call into these meetings to just plead with the City Council to keep residents safe.

A year and a half ago there was a shooting half a block from my house. We still don't know who did it.

There's a corner store half a block from my house. There have been two shootings there. To my knowledge neither of the – we still don't know who was responsible for those.

Now we have a drive-by shooting on San Pablo a month ago. We had this shooting at Berkeley Bowl West.

What the—WHAT IS GOING ON? What is the problem? Why is it so difficult to just keep us safe? I've got kids! I don't want to send them to the corner store.

You know, crime is going up. We don't have the number of police that we need. It is outrageous that we're even debating this.

Please give the Police Department the resources that they need. Please don't listen to these people who—I don't know what they are thinking. I don't know why it's asking so much to just keep my kids safe. That's all I need you to do. OK? please move this item forward on the Consent. We need to give the police the resources that they need to do their job. Clearly they don't have them right now. Thank you.

2022-03-28 Agenda Committee Audio.m4a, timestamps 37:55 to 39:43. Transcribed by Charles Clarke, a resident of Berkeley.

Full

URL: https://www.dropbox.com/sh/zq7y9dh8dnzxmyr/AACaeCOkJPV86NWq5HxiLgfQa/Agenda%20&%20Rules%20Policy%20Committee?dl=0&preview=2022-03-28+Agenda+Committee+Audio.m4a&subfolder_nav_tracking=1

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Item #9.c.
PAB 4-13-22
meeting

ODPA Staffing

Currently budgeted for, and included in proposed baseline budget for FYs 2023 & 2024:

1. Director of Police Accountability
2. PRC/PAB Investigator
3. Office Specialist III
4. Undetermined professional level position (former PRC Officer position) (vacant)*

* The thinking originally was that the permanent DPA would redefine this position. Interim DPA believes the current need is for a policy analyst.

Proposed additions:

5. PAB Investigator, who could also provide policy support as needed.
6. ► *Interim Director original proposal:* Office Specialist II – provisional (means not establishing a permanent position; allows flexibility to gauge whether a second full-time clerical person is needed).
► *Budget Proposal Subcommittee revision:* A second analyst, who could focus more on data analysis. Not to be made provisional.

Funding requests - beyond baseline

	Presented to Subcommittee	Subcommittee changes (in red)	(Amounts shown include wages + benefits)
Personnel			
Police Accountability Investigator	\$192,680	\$192,680	
Office Specialist II (provisional)	\$126,388		
Analyst (not provisional)		\$191,756	
Subtotal - Personnel	\$319,068	\$384,436	
Non-Personnel			
Professional Services - Misc	\$50,000	\$50,000	Outside assistance for policy review and development
Professional Services - Misc	\$50,000	\$50,000	Consultant to lead strategic planning process (FY 23)
Professional Services - Misc	\$25,000	\$25,000	Consultant to conduct performance evaluation of DPA (FY 24)
Communication Svcs - Landline	\$360	\$360	Landline phone for new staff
Non-Cap - computer, software	\$3,000	\$3,000	Computer setup for new staff (one-time)
Non-Cap - furniture & fixtures	\$6,000	\$6,000	Furniture for new staff (one-time)
Internal Svc - 1947 facilities	\$10,292	\$10,292	Office space for new staff
Registration, Airfare, Lodging, Meals		\$1,760	Additional Board member to NACOLE
Subtotal - Non-Personnel	\$144,652	\$146,412	
Grand total	\$463,720	\$530,848	

ODPA Budget worksheet

Account Description	2023 Baseline	2024 Baseline	2023 Funding request (over baseline)	2024 Funding request (over baseline)
WAGES - REG - MONTHLY MISC	\$614,153.00	\$627,296.00		\$384,436.00
FRINGE BENEFITS	\$326,832.00	\$331,379.00		\$384,436.00
Subtotal wages & benefits	\$940,985.00	\$958,675.00	\$1,343,111.00	\$1,343,111.00
PROF SVCS - STIPENDS	\$37,100.00	\$37,100.00		
PROF SVCS - TEMPORARY AGENCIES	\$3,000.00	\$3,000.00		
PROF SVCS - MISCELLANEOUS	\$31,000.00	\$31,000.00		\$75,000.00
TECH SVCS - EQUIPMENT MAINT	\$500.00	\$500.00		
TECH SVCS - SOFTWARE MAINT	\$678.00	\$678.00		
RENTAL OF REAL PROPERTY	\$5,397.00	\$5,397.00		
RENTAL OF EQUIPMENT	\$15,000.00	\$15,000.00		
COMM SVCS - TELE - LANDLINE	\$1,061.00	\$1,061.00		\$360.00
COMM SVCS - TELE - CELL	\$624.00	\$624.00		
TRAIN AND CONF - REGISTRATION	\$4,250.00	\$4,250.00		\$450.00
TRAVEL - AIRFARE	\$2,250.00	\$2,250.00		\$450.00
TRAVEL - LODGING	\$3,200.00	\$3,200.00		\$640.00
TRAVEL - OTHER TRANS	\$500.00	\$500.00		
TRAVEL - MEALS	\$1,100.00	\$1,100.00		\$220.00
PRINTING AND BINDING	\$1,000.00	\$1,000.00		
FEEES - PROF DUES AND FEES	\$400.00	\$400.00		
SUPPLIES - OFFICE	\$3,639.00	\$3,639.00		
SUPPLIES - POSTAGE	\$2,100.00	\$2,100.00		
SUPPLIES - BOOKS AND SUBSCRIP	\$7,317.00	\$7,317.00		
SUPPLIES - FOOD - NON-EMPLOYEE	\$400.00	\$400.00		
NON-CAP - COMP, SOFTWARE & OFE	\$1,500.00	\$500.00		\$3,000.00
NON-CAP - FURNITURE & FIXTURE	\$2,000.00	\$0.00		\$6,000.00
Subtotal non-personnel, non-internal Svcs	\$124,016.00	\$121,016.00	\$232,136.00	\$198,136.00
INT SVC - 1947 CENTER FAC MAIN	\$53,456.00	\$53,456.00		\$10,292.00
INT SVC - NON-ROUTINE FAC MAIN	\$0.00	\$0.00		
INT SVC - TECH COST ALLOC FUND	\$19,739.00	\$19,739.00		
INT SVC - MAIL SERVICES	\$3,528.00	\$3,528.00		
INT SVC - CITY PKG PERMITS	\$3,000.00	\$3,000.00		
Subtotal Internal Services	\$79,723.00	\$79,723.00	\$90,015.00	\$90,015.00
TOTAL	\$1,144,724.00	\$1,159,414.00	\$1,665,262.00	\$1,631,262.00

Lee, Katherine

From: Office of the Director of Public Accountability
Sent: Tuesday, April 12, 2022 3:12 PM
To: Lee, Katherine
Subject: PAB New business Item 10.c.

From: Kitt Saginor <ksaginor@gmail.com>
Sent: Tuesday, April 12, 2022 2:47 PM
To: Office of the Director of Public Accountability <OfficeoftheDirectorofPoliceAccountability@cityofberkeley.info>
Subject: PAB New business Item 10.c.

WARNING: This is not a City of Berkeley email. Do not click links or attachments unless you trust the sender and know the content is safe.

Esteemed Members of the Police Accountability Board,

In regards to Item 10. c. - proposed change to Policy 311.6 - I would like to point out several facts that you may wish to consider.

1. The limit placed by the current policy on searches, adopted in Fall 2020, was ratified at the Special Meeting of February 23, 2021 by unanimous vote of the City Council which directed the City Manager to

- Limit warrantless searches of individuals on supervised release status such as Post Release Community Supervision (PRCS), probation, or parole.

<https://www.cityofberkeley.info/Clerk/City_Council/2021/02_Feb/Documents/02-23_Special_Annotated_Agenda_pdf.aspx>
along with other Fair and Impartial Policing recommendations.

2. Under exigent circumstances, **anyone** may be searched without a warrant. Please keep in mind that this section of 311.6 applies only in the absence of exigent circumstances.

3. The Draft provided to you for the proposed change states:
Currently an individual on probation or parole in Berkeley would be on a nearly equal footing as someone who is not on probation or parole when it comes to search and seizure. -- p. 2, First sentence of the section Current Situation and Its Effects.

This is quite inaccurate. Requiring only 'reasonable suspicion' is NOT "nearly equal footing" with requiring a search warrant based on probable cause. Also, the examples given in the draft are misleading. Under BPD's policy, a sex offender is NOT unsupervised. Sex offenders, domestic violence offenders and other "special cases" receive enhanced supervision from parole officers who may search the person and possessions of their charges.

4. At the PAB's last Regular Meeting on March 23rd, the Berkeley Police Department shared their materials for training officers on Policy 311.6. The slide set from that training is posted online.
<https://www.cityofberkeley.info/uploadedFiles/Office_of_the_Director_of_Police_Accountability/PABoard/2022-03-23-SuppMaterial.SearchSeizureLaw.ppt.pdf>. Slides 32-40 concern search of probationers and parolees. Here is one example given of a permissible search under 311.6

Warrantless search of Probationers and Parolees

Officers conduct a traffic stop in the Berkeley Hills at 3 AM and learn that the driver is on parole for PC 211 [robbery]. The parolee doesn't have a viable reason for being in the Berkeley Hills at this hour. The officer is aware that this area has been plagued with catalytic converter thefts in recent weeks. Exercising the parolees search conditions would be appropriate and within policy. Also note the underlying crime the probationer or parolee has committed may or may not be a contributing factor to the officers' articulable facts that a crime has been, is being, or is about to be committed.

From BPD presentation to PAB on March 23, 2022

Please note that the articulable facts that create a reasonable suspicion in this example are that a person on parole for robbery "doesn't have a viable reason for being in the Berkeley Hills at this hour" in an area that has experienced catalytic converter thefts in recent weeks. This is a low bar. Reasonable suspicion is a low bar.

5. The proposed language change to Policy 311.6 includes the phrase:

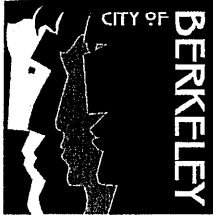
and/**OR confirm compliance with probation or parole conditions.** (emphasis added).

This 'OR' phrase removes even a requirement for articulable facts and will revert Berkeley to the minimum requirements of California State Law. California is among the 9 states providing the very least protection against unreasonable search and seizure for persons on supervised release. As explained by the BPD "Warrantless, suspicionless probation & parole searches are both reasonable under the 4th Amendment, according to the California Supreme Court" (BPD presentation to PAB 3/23/2022)

6. The reasonable suspicion standard requires two parts - reason and suspicion. The change proposed would disconnect these two parts. Citing 'articulable facts' the proposal retains the reason, but discards a requirement of suspicion. What purpose is served by searching persons without suspicion?

Thank you for your service to our city.

Kitt Saginor



Kate Harrison
Vice Mayor, District 4

Item #10.e.
FAB 4-13-22
meeting

REVISED AGENDA MATERIAL

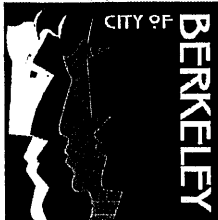
Meeting Date: April 11, 2022

Item #: 26

Item Description: Adopt a Resolution in Support of California State Assembly Bill 2557 (Bonta): Specifying That Records of Civilian Law Enforcement Oversight Agencies Are Subject to the Disclosure Requirements of the Public Records Act

Submitted by: Vice Mayor Harrison

Added Councilmember Hahn as a co-sponsor. Clarified in transmittal that a letter will be sent to the Governor.



Kate Harrison
Vice Mayor, District 4

CONSENT CALENDAR
April 26, 2022

To: Honorable Mayor and Members of the City Council
From: Vice Mayor Harrison and Councilmember Hahn
Subject: Adopt a Resolution in Support of California State Assembly Bill 2557 (Bonta): Specifying That Records of Civilian Law Enforcement Oversight Agencies Are Subject to the Disclosure Requirements of the Public Records Act

RECOMMENDATION

Adopt a Resolution in support of California State Assembly Bill 2557 (Bonta) that specifies that records and information obtained from records of civilian law enforcement oversight agencies are subject to the disclosure requirements of the public records act and not considered confidential.

Send copies of the resolution and letters to Governor Newsom, State Senator Skinner, and Assemblymembers Wicks and Bonta.

CURRENT SITUATION, EFFECTS, AND RATIONALE FOR RECOMMENDATION

Due to a 2006 California Supreme Court decision, *Copley Press, Inc. v. Superior Court*, (2006) 39 Cal.4th 1272, records and information obtained from records of civilian law enforcement oversight agencies are treated as if they were confidential personnel records held by police departments. Accordingly, those agencies have been required since 2006 to withhold from the public most, if not all, investigations of law enforcement officer misconduct. This is in stark contrast to the operation of civilian law enforcement oversight agencies prior to the *Copley Press* decision, which, until that decision, operated with full transparency.

The remedy is a direct legislative repeal of *Copley Press*, including specific legislative language allowing civilian law enforcement oversight agencies to operate openly and transparently, as was the practice prior to 2006.

AB 2557 amends California Penal Code Section 832.7 to specify that records and information obtained from records of civilian law enforcement oversight agencies are subject to the disclosure requirements of the Public Records Act (Government Code

Section 6250 et seq.) and not considered confidential pursuant to Penal Code Section 832.7.

BACKGROUND

The civil unrest in the wake of the murder of George Floyd at the hands of former Minneapolis Police Officer Derek Chauvin, and numerous other unlawful acts committed by law enforcement personnel, has caused our nation to urgently scrutinize policing activities and reimagine public safety, especially with the understanding that the historic and systemic abuses of police authority disproportionately fall on minority and at-risk communities.

Black and Latinx individuals make up a combined 25% of the United States population but comprise over 75% of the victims of fatal police shootings in the past 5 years, such as the recent killings of Sean Monterrosa by the Vallejo Police Department and of Erik Salgado by the California Highway Patrol. It is critical that decisions and oversight concerning community policing occur in the full light of day so that residents can understand precisely the scope of disparate policing outcomes and any alleged violations of civil rights, policies, or the law.

At least 25 California municipalities, including Berkeley and most of our largest cities, have established civilian law enforcement oversight boards to provide necessary public oversight of policing activities in the community. A 15-year-old ruling from the California Supreme Court is causing the work of many California civilian oversight boards to be unnecessarily constrained by confidentiality requirements that are antithetical to the public work those boards are mandated to undertake.

For decades before the *Copley* decision, civilian oversight agencies had acted openly and not subject to employment confidentiality laws. Once the *Copley* decision came out those same bodies were required to cloak their work in secrecy. Civilian police oversight agencies are important checks on law enforcement activities and should be allowed to reopen their investigations to public review.

FISCAL IMPACTS OF RECOMMENDATION

This proposal will save jurisdictions money by avoiding countless hours of redactions and costly settlements resulting from non-compliance with CPRA requests for documents since the passage of SB 1421 and SB 16. Staff time will be necessary for the Clerk to send letters to the Governor and state legislators.

ENVIRONMENTAL SUSTAINABILITY

No discernable impact.

CONTACT PERSON

Vice Mayor Kate Harrison, (510) 981-7140

ATTACHMENTS

2180 Milvia Street, Berkeley, CA 94704 • Tel: (510) 981-7140 • TDD: (510) 981-6903 • Fax: (510) 644-1174
E-Mail: KHarrison@cityofberkeley.info

Adopt a Resolution in Support of California State Assembly Bill 2557
(Bonta): Specifying That Records of Civilian Law Enforcement Oversight
Agencies Are Subject to the Disclosure Requirements of the Public
Records Act

CONSENT CALENDAR
April 26, 2022

1. Resolution
2. Letters
3. Legislation

RESOLUTION NO. ##,###-N.S.

ADOPT A RESOLUTION IN SUPPORT OF CALIFORNIA STATE ASSEMBLY BILL 2557
(BONTA): SPECIFYING THAT RECORDS OF CIVILIAN LAW ENFORCEMENT OVERSIGHT
AGENCIES ARE SUBJECT TO THE DISCLOSURE REQUIREMENTS OF THE PUBLIC
RECORDS ACT

WHEREAS, in *Copley Press, Inc. v. Superior Court* (2006) 39 Cal.4th 1272, the California State Supreme Court decided that records and information obtained from records of civilian law enforcement oversight agencies will be treated as if they were confidential personnel records held by police departments; and

WHEREAS, as these records are considered confidential, agencies have been required to withhold almost all such records involving investigations of officer misconduct; and

WHEREAS, the *Copley Press* decision prevents the public from learning the extent of any discipline, but for some minimal exceptions, that may have been imposed as a result of misconduct; and

WHEREAS, prior to 2006, civilian law enforcement oversight agencies operated with full transparency; and

WHEREAS, the ability for the public to have access to information regarding complaints about police misconduct and the response to any such complaints builds public confidence in the ability of government to hold police officers who engage in misconduct accountable; and

WHEREAS, if AB 2557 is enacted into law, the legislation will save jurisdictions time and resources currently being expended on redactions and settlements for non-compliance with public records requests for documents following the passage of both Senate Bill 1421 and Senate Bill 16; and

WHEREAS, AB 2557 is a direct legislative repeal of the *Copley Press* decision; and

WHEREAS, AB 2557 will allow civilian law enforcement agencies to operate transparently as they did prior to 2006.

NOW, THEREFORE BE IT RESOLVED, that the Berkeley City Council hereby endorses AB 2557 and urges the California State Legislature and Governor Gavin Newsom to support its enactment into law.

BE IT FURTHER RESOLVED that copies of this Resolution and letters will be sent to Governor Newsom, State Senator Skinner, and Assemblymembers Wicks and Bonta.

The Honorable Governor Gavin Newsom
1021 O Street, Suite 9000
Sacramento, CA 95814

RE: AB 2557 (Bonta) Peace Officers Records

Dear Governor Newsom,

The Berkeley City Council conveys its support for AB 2557 (Bonta). AB 2557 amends California Penal Code Section 832.7 to specify that records and information obtained from records of civilian law enforcement oversight agencies are subject to the disclosure requirements of the Public Records Act (Government Code Section 6250 et seq.) and not considered confidential pursuant to Penal Code Section 832.7.

Because of a 2006 state supreme court decision, *Copley Press, Inc. v. Superior Court*, (2006) 39 Cal.4th 1272), records and information obtained from records of civilian law enforcement oversight agencies are treated as if they were confidential personnel records held by police departments. Accordingly, those agencies have been required since 2006 to withhold from the public, most if not all, investigations of law enforcement officer misconduct. This is in stark contrast to the operation of civilian law enforcement oversight agencies prior to the Copley Press decision, which, until that decision, operated with full transparency.

The civil unrest in the wake of the callous murder of George Floyd at the hands of former Minneapolis Police Officer Derek Chauvin, and numerous other similar atrocities committed by law enforcement personnel, has caused our nation to urgently scrutinize community policing activities with the manifest realization that the historic and systemic abuses of police authority disproportionately fall on minority and at-risk communities. As a glaring statistic evidencing this point, Black and Latinx individuals make up a combined 25% of the United States population but comprise over 75% of the victims of fatal police shootings in the past 5 years, such as the recent killings of Sean Monterrosa by the Vallejo Police Department and of Erik Salgado by the California Highway Patrol. It is more important, now than ever, that decisions concerning community policing occur in the full light of day so that our communities can understand precisely the scope of the systemic problem of abusive police tactics and what our local governments can do to best eliminate those abuses.

At least 25 California municipalities, including Berkeley, have established civilian law enforcement oversight boards to provide necessary public oversight of policing activities in the community. Many such civilian oversight boards have been in existence for decades, including the Oakland Police Commission and its predecessor, the Oakland Citizens' Police Review Board. Unfortunately, a 15 year-old ruling from the California Supreme Court is causing the the work of civilian oversight boards across the state, to be unnecessarily constrained by confidentiality requirements that are antithetical to the public work those boards are mandated to undertake.

For decades before the Copley decision, civilian oversight agencies had acted openly and not subject to employment confidentiality laws. Once the Copley decision came out those same bodies were required to cloak their work in secrecy, and that unnecessary secrecy is still happening.

This is not right. Civilian police oversight agencies operate as a needed check on law enforcement and should be allowed to reopen their investigations to public review. AB 2557 accomplishes this through a direct legislative repeal of Copley. By passing this amendment, not only will California show its commitment to current civilian oversight agencies but will also encourage other jurisdictions to create civilian oversight agencies to ensure that law enforcement in California is truly working for all people.

For these reasons, Berkeley City Council supports AB 2557.

Sincerely,

The Berkeley City Council

The Honorable State Senator Nancy Skinner
Capitol Office, 1021 O Street, Suite 8630
Sacramento, CA 95814

RE: AB 2557 (Bonta) Peace Officers Records

Dear Senator Skinner,

The Berkeley City Council conveys its support for AB 2557 (Bonta). AB 2557 amends California Penal Code Section 832.7 to specify that records and information obtained from records of civilian law enforcement oversight agencies are subject to the disclosure requirements of the Public Records Act (Government Code Section 6250 et seq.) and not considered confidential pursuant to Penal Code Section 832.7.

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For these reasons, Berkeley City Council supports AB 2557.

Sincerely,

The Berkeley City Council

The Honorable Assemblymember Buffy Wicks
Capitol Office, 1021 O Street, Suite 4240
P.O. Box 942849, Sacramento, CA 94249-0015

RE: AB 2557 (Bonta) Peace Officers Records

Dear Assemblymember Wicks,

The Berkeley City Council conveys its support for AB 2557 (Bonta). AB 2557 amends California Penal Code Section 832.7 to specify that records and information obtained from records of civilian law enforcement oversight agencies are subject to the disclosure requirements of the Public Records Act (Government Code Section 6250 et seq.) and not considered confidential pursuant to Penal Code Section 832.7.

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For these reasons, Berkeley City Council supports AB 2557.

Sincerely,

The Berkeley City Council

The Honorable Assemblymember Mia Bonta
Capitol Office, 1021 O Street, Suite 5620
P.O. Box 942849, Sacramento, CA 94249-0018

RE: AB 2557 (Bonta) Peace Officers Records

Dear Assemblymember Bonta,

The Berkeley City Council conveys its support for AB 2557 (Bonta). AB 2557 amends California Penal Code Section 832.7 to specify that records and information obtained from records of civilian law enforcement oversight agencies are subject to the disclosure requirements of the Public Records Act (Government Code Section 6250 et seq.) and not considered confidential pursuant to Penal Code Section 832.7.

Because of a 2006 state supreme court decision, *Copley Press, Inc. v. Superior Court*, (2006) 39 Cal.4th 1272), records and information obtained from records of civilian law enforcement oversight agencies are treated as if they were confidential personnel records held by police departments. Accordingly, those agencies have been required since 2006 to withhold from the public, most if not all, investigations of law enforcement officer misconduct. This is in stark contrast to the operation of civilian law enforcement oversight agencies prior to the Copley Press decision, which, until that decision, operated with full transparency.

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For these reasons, Berkeley City Council supports AB 2557.

Sincerely,

The Berkeley City Council

ASSEMBLY BILL

No. 2557

Introduced by Assembly Member Mia Bonta

February 17, 2022

An act to amend Section 832.7 of the Penal Code, relating to peace officers.

LEGISLATIVE COUNSEL'S DIGEST

AB 2557, as introduced, Mia Bonta. Peace officers: records.

Existing law, the California Public Records Act, requires a state or local public agency to make public records available for public inspection and to make copies available upon request and payment of a fee, unless the records are exempt from disclosure. Existing law makes peace officer and custodial officer personnel records and specified records maintained by any state or local agency, or information obtained from these records, confidential and prohibits these records from being disclosed in any criminal or civil proceeding except by discovery.

This bill would make records and information obtained from records maintained by an agency or body established by a city, county, city and county, local government entity, state agency, or state department for the purpose of civilian oversight of peace officers subject to disclosure pursuant to the California Public Records Act. The bill would require those records to be redacted only as specified. By increasing duties on local entities, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state,

reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares that public
2 access to information concerning civilian complaints regarding
3 peace officers, including the records of proceedings of civilian law
4 enforcement review agencies, is crucial to safe and effective law
5 enforcement in the state. It is the intent of the Legislature, in
6 enacting this act, to abrogate the decision in Copley Press, Inc. v.
7 Superior Court (2006) 39 Cal.4th 1272, to restore public access to
8 peace officer records, and to restore public access to meetings and
9 hearings that were open to the public prior to the Copley Press
10 decision.

11 SEC. 2. Section 832.7 of the Penal Code is amended to read:

12 832.7. (a) Except as provided in subdivision (b), the personnel
13 records of peace officers and custodial officers and records
14 maintained by a state or local agency pursuant to Section 832.5,
15 or information obtained from these records, are confidential and
16 shall not be disclosed in any criminal or civil proceeding except
17 by discovery pursuant to Sections 1043 and 1046 of the Evidence
18 Code. This section does not apply to investigations or proceedings
19 concerning the conduct of peace officers or custodial officers, or
20 an agency or department that employs those officers, conducted
21 by a grand jury, a district attorney's office, or the Attorney
22 General's office, or the Commission on Peace Officer Standards
23 and Training.

24 (b) (1) Notwithstanding subdivision (a), subdivision (f) of
25 Section 6254 of the Government Code, or any other law, the
26 following peace officer or custodial officer personnel records and
27 records maintained by a state or local agency shall not be
28 confidential and shall be made available for public inspection
29 pursuant to the California Public Records Act (Chapter 3.5
30 (commencing with Section 6250) of Division 7 of Title 1 of the
31 Government Code):

32 (A) A record relating to the report, investigation, or findings of
33 any of the following:

1 (i) An incident involving the discharge of a firearm at a person
2 by a peace officer or custodial officer.

3 (ii) An incident involving the use of force against a person by
4 a peace officer or custodial officer that resulted in death or in great
5 bodily injury.

6 (iii) A sustained finding involving a complaint that alleges
7 unreasonable or excessive force.

8 (iv) A sustained finding that an officer failed to intervene against
9 another officer using force that is clearly unreasonable or excessive.

10 (B) (i) Any record relating to an incident in which a sustained
11 finding was made by any law enforcement agency or oversight
12 agency that a peace officer or custodial officer engaged in sexual
13 assault involving a member of the public.

14 (ii) As used in this subparagraph, "sexual assault" means the
15 commission or attempted initiation of a sexual act with a member
16 of the public by means of force, threat, coercion, extortion, offer
17 of leniency or other official favor, or under the color of authority.
18 For purposes of this subparagraph, the propositioning for or
19 commission of any sexual act while on duty is considered a sexual
20 assault.

21 (iii) As used in this subparagraph, "member of the public" means
22 any person not employed by the officer's employing agency and
23 includes any participant in a cadet, explorer, or other youth program
24 affiliated with the agency.

25 (C) Any record relating to an incident in which a sustained
26 finding was made by any law enforcement agency or oversight
27 agency involving dishonesty by a peace officer or custodial officer
28 directly relating to the reporting, investigation, or prosecution of
29 a crime, or directly relating to the reporting of, or investigation of
30 misconduct by, another peace officer or custodial officer, including,
31 but not limited to, false statements, filing false reports, destruction,
32 falsifying, or concealing of evidence, or perjury.

33 (D) Any record relating to an incident in which a sustained
34 finding was made by any law enforcement agency or oversight
35 agency that a peace officer or custodial officer engaged in conduct
36 including, but not limited to, verbal statements, writings, online
37 posts, recordings, and gestures, involving prejudice or
38 discrimination against a person on the basis of race, religious creed,
39 color, national origin, ancestry, physical disability, mental
40 disability, medical condition, genetic information, marital status,

1 sex, gender, gender identity, gender expression, age, sexual
2 orientation, or military and veteran status.

3 (E) Any record relating to an incident in which a sustained
4 finding was made by any law enforcement agency or oversight
5 agency that the peace officer made an unlawful arrest or conducted
6 an unlawful search.

7 (2) Records that are subject to disclosure under clause (iii) or
8 (iv) of subparagraph (A) of paragraph (1), or under subparagraph
9 (D) or (E) of paragraph (1), relating to an incident that occurred
10 before January 1, 2022, shall not be subject to the time limitations
11 in paragraph (8) until January 1, 2023.

12 (3) Records that shall be released pursuant to this subdivision
13 include all investigative reports; photographic, audio, and video
14 evidence; transcripts or recordings of interviews; autopsy reports;
15 all materials compiled and presented for review to the district
16 attorney or to any person or body charged with determining
17 whether to file criminal charges against an officer in connection
18 with an incident, or whether the officer's action was consistent
19 with law and agency policy for purposes of discipline or
20 administrative action, or what discipline to impose or corrective
21 action to take; documents setting forth findings or recommended
22 findings; and copies of disciplinary records relating to the incident,
23 including any letters of intent to impose discipline, any documents
24 reflecting modifications of discipline due to the Skelly or grievance
25 process, and letters indicating final imposition of discipline or
26 other documentation reflecting implementation of corrective action.
27 Records that shall be released pursuant to this subdivision also
28 include records relating to an incident specified in paragraph (1)
29 in which the peace officer or custodial officer resigned before the
30 law enforcement agency or oversight agency concluded its
31 investigation into the alleged incident.

32 (4) A record from a separate and prior investigation or
33 assessment of a separate incident shall not be released unless it is
34 independently subject to disclosure pursuant to this subdivision.

35 (5) If an investigation or incident involves multiple officers,
36 information about allegations of misconduct by, or the analysis or
37 disposition of an investigation of, an officer shall not be released
38 pursuant to subparagraph (B), (C), (D), or (E) of paragraph (1),
39 unless it relates to a sustained finding regarding that officer that
40 is itself subject to disclosure pursuant to this section. However,

1 factual information about that action of an officer during an
2 incident, or the statements of an officer about an incident, shall be
3 released if they are relevant to a finding against another officer
4 that is subject to release pursuant to subparagraph (B), (C), (D),
5 or (E) of paragraph (1).

6 (6) An agency shall redact a record disclosed pursuant to this
7 section only for any of the following purposes:

8 (A) To remove personal data or information, such as a home
9 address, telephone number, or identities of family members, other
10 than the names and work-related information of peace and custodial
11 officers.

12 (B) To preserve the anonymity of whistleblowers, complainants,
13 victims, and witnesses.

14 (C) To protect confidential medical, financial, or other
15 information of which disclosure is specifically prohibited by federal
16 law or would cause an unwarranted invasion of personal privacy
17 that clearly outweighs the strong public interest in records about
18 possible misconduct and use of force by peace officers and
19 custodial officers.

20 (D) Where there is a specific, articulable, and particularized
21 reason to believe that disclosure of the record would pose a
22 significant danger to the physical safety of the peace officer,
23 custodial officer, or another person.

24 (7) Notwithstanding paragraph (6), an agency may redact a
25 record disclosed pursuant to this section, including personal
26 identifying information, where, on the facts of the particular case,
27 the public interest served by not disclosing the information clearly
28 outweighs the public interest served by disclosure of the
29 information.

30 (8) An agency may withhold a record of an incident described
31 in paragraph (1) that is the subject of an active criminal or
32 administrative investigation, in accordance with any of the
33 following:

34 (A) (i) During an active criminal investigation, disclosure may
35 be delayed for up to 60 days from the date the misconduct or use
36 of force occurred or until the district attorney determines whether
37 to file criminal charges related to the misconduct or use of force,
38 whichever occurs sooner. If an agency delays disclosure pursuant
39 to this clause, the agency shall provide, in writing, the specific
40 basis for the agency's determination that the interest in delaying

1 disclosure clearly outweighs the public interest in disclosure. This
2 writing shall include the estimated date for disclosure of the
3 withheld information.

4 (ii) After 60 days from the misconduct or use of force, the
5 agency may continue to delay the disclosure of records or
6 information if the disclosure could reasonably be expected to
7 interfere with a criminal enforcement proceeding against an officer
8 who engaged in misconduct or used the force. If an agency delays
9 disclosure pursuant to this clause, the agency shall, at 180-day
10 intervals as necessary, provide, in writing, the specific basis for
11 the agency's determination that disclosure could reasonably be
12 expected to interfere with a criminal enforcement proceeding. The
13 writing shall include the estimated date for the disclosure of the
14 withheld information. Information withheld by the agency shall
15 be disclosed when the specific basis for withholding is resolved,
16 when the investigation or proceeding is no longer active, or by no
17 later than 18 months after the date of the incident, whichever occurs
18 sooner.

19 (iii) After 60 days from the misconduct or use of force, the
20 agency may continue to delay the disclosure of records or
21 information if the disclosure could reasonably be expected to
22 interfere with a criminal enforcement proceeding against someone
23 other than the officer who engaged in misconduct or used the force.
24 If an agency delays disclosure under this clause, the agency shall,
25 at 180-day intervals, provide, in writing, the specific basis why
26 disclosure could reasonably be expected to interfere with a criminal
27 enforcement proceeding, and shall provide an estimated date for
28 the disclosure of the withheld information. Information withheld
29 by the agency shall be disclosed when the specific basis for
30 withholding is resolved, when the investigation or proceeding is
31 no longer active, or by no later than 18 months after the date of
32 the incident, whichever occurs sooner, unless extraordinary
33 circumstances warrant continued delay due to the ongoing criminal
34 investigation or proceeding. In that case, the agency must show
35 by clear and convincing evidence that the interest in preventing
36 prejudice to the active and ongoing criminal investigation or
37 proceeding outweighs the public interest in prompt disclosure of
38 records about misconduct or use of force by peace officers and
39 custodial officers. The agency shall release all information subject

1 to disclosure that does not cause substantial prejudice, including
2 any documents that have otherwise become available.

3 (iv) In an action to compel disclosure brought pursuant to
4 Section 6258 of the Government Code, an agency may justify
5 delay by filing an application to seal the basis for withholding, in
6 accordance with Rule 2.550 of the California Rules of Court, or
7 any successor rule, if disclosure of the written basis itself would
8 impact a privilege or compromise a pending investigation.

9 (B) If criminal charges are filed related to the incident in which
10 misconduct occurred or force was used, the agency may delay the
11 disclosure of records or information until a verdict on those charges
12 is returned at trial or, if a plea of guilty or no contest is entered,
13 the time to withdraw the plea pursuant to Section 1018.

14 (C) During an administrative investigation into an incident
15 described in of paragraph (1), the agency may delay the disclosure
16 of records or information until the investigating agency determines
17 whether misconduct or the use of force violated a law or agency
18 policy, but no longer than 180 days after the date of the employing
19 agency's discovery of the misconduct or use of force, or allegation
20 of misconduct or use of force, by a person authorized to initiate
21 an investigation.

22 (9) A record of a complaint, or the investigations, findings, or
23 dispositions of that complaint, shall not be released pursuant to
24 this section if the complaint is frivolous, as defined in Section
25 128.5 of the Code of Civil Procedure, or if the complaint is
26 unfounded.

27 (10) The cost of copies of records subject to disclosure pursuant
28 to this subdivision that are made available upon the payment of
29 fees covering direct costs of duplication pursuant to subdivision
30 (b) of Section 6253 of the Government Code shall not include the
31 costs of searching for, editing, or redacting the records.

32 (11) Except to the extent temporary withholding for a longer
33 period is permitted pursuant to paragraph (8), records subject to
34 disclosure under this subdivision shall be provided at the earliest
35 possible time and no later than 45 days from the date of a request
36 for their disclosure.

37 (12) (A) For purposes of releasing records pursuant to this
38 subdivision, the lawyer-client privilege does not prohibit the
39 disclosure of either of the following:

1 (i) Factual information provided by the public entity to its
2 attorney or factual information discovered in any investigation
3 conducted by, or on behalf of, the public entity's attorney.

4 (ii) Billing records related to the work done by the attorney so
5 long as the records do not relate to active and ongoing litigation
6 and do not disclose information for the purpose of legal
7 consultation between the public entity and its attorney.

8 (B) This paragraph does not prohibit the public entity from
9 asserting that a record or information within the record is exempted
10 or prohibited from disclosure pursuant to any other federal or state
11 law.

12 (c) Notwithstanding subdivisions (a) and (b), a department or
13 agency shall release to the complaining party a copy of the
14 complaining party's own statements at the time the complaint is
15 filed.

16 (d) Notwithstanding subdivisions (a) and (b), a department or
17 agency that employs peace or custodial officers may disseminate
18 data regarding the number, type, or disposition of complaints
19 (sustained, not sustained, exonerated, or unfounded) made against
20 its officers if that information is in a form that does not identify
21 the individuals involved.

22 (e) Notwithstanding subdivisions (a) and (b), a department or
23 agency that employs peace or custodial officers may release factual
24 information concerning a disciplinary investigation if the officer
25 who is the subject of the disciplinary investigation, or the officer's
26 agent or representative, publicly makes a statement that they know
27 to be false concerning the investigation or the imposition of
28 disciplinary action. Information may not be disclosed by the peace
29 or custodial officer's employer unless the false statement was
30 published by an established medium of communication, such as
31 television, radio, or a newspaper. Disclosure of factual information
32 by the employing agency pursuant to this subdivision is limited
33 to facts contained in the officer's personnel file concerning the
34 disciplinary investigation or imposition of disciplinary action that
35 specifically refute the false statements made public by the peace
36 or custodial officer or their agent or representative.

37 (f) (1) The department or agency shall provide written
38 notification to the complaining party of the disposition of the
39 complaint within 30 days of the disposition.

1 (2) The notification described in this subdivision is not
2 conclusive or binding or admissible as evidence in any separate
3 or subsequent action or proceeding brought before an arbitrator,
4 court, or judge of this state or the United States.

5 (g) *Notwithstanding subdivision (a), subdivision (f) of Section*
6 *6254 of the Government Code, or any other law, or the holding in*
7 *Copley Press, Inc. v. Superior Court (2006) 39 Cal.4th 1272,*
8 *records and information obtained from records maintained by an*
9 *agency or body established by a city, county, city and county, local*
10 *government entity, state agency, or state department for the*
11 *purpose of civilian oversight of peace officers shall not be*
12 *confidential and shall be made available for public inspection*
13 *pursuant to the California Public Records Act (Chapter 3.5*
14 *(commencing with Section 6250) of Division 7 of Title 1 of the*
15 *Government Code). A record disclosed pursuant to this paragraph*
16 *shall be redacted only to remove personal data or information*
17 *such as a home address, telephone number, or identities of family*
18 *members, other than the names and work-related information of*
19 *peace and custodial officers, to preserve the anonymity of*
20 *complainants and witnesses, or to protect confidential medical,*
21 *financial, or other information in which disclosure would cause*
22 *an unwarranted invasion of personal privacy that clearly outweighs*
23 *the strong public interest in records about misconduct by peace*
24 *officers and custodial officers, or where there is a specific,*
25 *particularized reason to believe that disclosure of the record would*
26 *pose a significant danger to the physical safety of the peace officer,*
27 *custodial officer, or others.*

28 (~~g~~)
29 (h) This section does not affect the discovery or disclosure of
30 information contained in a peace or custodial officer's personnel
31 file pursuant to Section 1043 of the Evidence Code.

32 (~~h~~)
33 (i) This section does not supersede or affect the criminal
34 discovery process outlined in Chapter 10 (commencing with
35 Section 1054) of Title 6 of Part 2, or the admissibility of personnel
36 records pursuant to subdivision (a), which codifies the court
37 decision in *Pitchess v. Superior Court (1974) 11 Cal.3d 531.*

38 (~~i~~)

1 (j) Nothing in this chapter is intended to limit the public's right
2 of access as provided for in Long Beach Police Officers
3 Association v. City of Long Beach (2014) 59 Cal.4th 59.
4 SEC. 3. If the Commission on State Mandates determines that
5 this act contains costs mandated by the state, reimbursement to
6 local agencies and school districts for those costs shall be made
7 pursuant to Part 7 (commencing with Section 17500) of Division
8 4 of Title 2 of the Government Code.

O

