



# THE BAR ASSOCIATION OF SAN FRANCISCO

## 2023 OFFICERS AND BOARD OF DIRECTORS

Vidhya Prabhakaran  
President

Teresa Johnson  
President-Elect

Charles Jung  
Treasurer

Peggy Otum  
Secretary

Katherine Lubin Benson

Erin Connell

Neslihan Doran Civan

Nathaniel Dunn

Matthew Gluck

Jennifer Grace

Laura Hurtado

Adam Kaplan

Elinor Leary

Lindsay Llewellyn

Paul Moore

Constance Norton

Catherine Ongiri

David Rizk

Tony Schoenberg

Charles (Chuck) Thompson

Khari Tillery

Demetria Vong-Spillan

Allison Wang

Colin West

## BARRISTERS CLUB OFFICERS

Courtney Brown  
President

Sarah Hoffman  
President-Elect

Sydney Allen  
Treasurer

Joseph Blake Winston IV  
Secretary

## EXECUTIVE DIRECTOR AND GENERAL COUNSEL

Yolanda M. Jackson

January 6, 2023

Chief William Scott  
San Francisco Police Commission  
San Francisco Police Headquarters  
1245 3rd Street  
San Francisco CA 94158

Via email: [william.scott@sfgov.org](mailto:william.scott@sfgov.org); [SFPD.Commission@sfgov.org](mailto:SFPD.Commission@sfgov.org);  
[Stacy.A.Youngblood@sfgov.org](mailto:Stacy.A.Youngblood@sfgov.org)

Dear Chief Scott and San Francisco Police Commissioners:

**Re: The Bar Association of San Francisco's Support for DGO 9.07  
– Police Commission Meeting 1/11/23**

Dear Chief Scott, President Elias, Vice President Carter-Oberstone and  
Commissioners Benedicto, Byrne, Walker, Yanez and Yee:

The Bar Association of San Francisco (BASF) and its nearly 7,000 members write to express strong support for proposed Department General Order 9.07. BASF is the largest legal organization in Northern California and remains dedicated to criminal justice reform. In 2015, BASF established the Criminal Justice Task Force (CJTF), consisting of judges, prosecutors, public defenders, law enforcement, private counsel, civil liberties advocates, and others, to advance systemic reforms in San Francisco. BASF has a long history of supporting best practices and innovative ideas in the area of criminal justice reform and has been deeply involved with modernizing and improving policing by SFPD. As most, though not all of you may know, BASF, through its CJTF has contributed significantly to criminal justice and police reform, commencing with its participation on the Use of Force and Body Worn Cameras Working Groups – both preceding involvement from either the United States or California Departments of Justice. In 2016 following considerable research, we submitted an important [report](#) on the critical need for data collection and analysis particularly as it informed all of us on the need for remedies to address racial disparities in policing. Our CJTF members have served on and contributed to each Working Group established by the DOJ's 272 recommendations, with significant contributions on Use of Force, Community Policy and Bias Free Policing. Our most recent involvement included our work on the Working Group now resulting in the Draft DGO 9.07, formerly DGO 9.01.

We encourage and strongly support effective law enforcement and agree that public safety is always a priority for all San Franciscans. Racial disparities are also of grave concern and the 2016 DOJ Recommendations were designed to



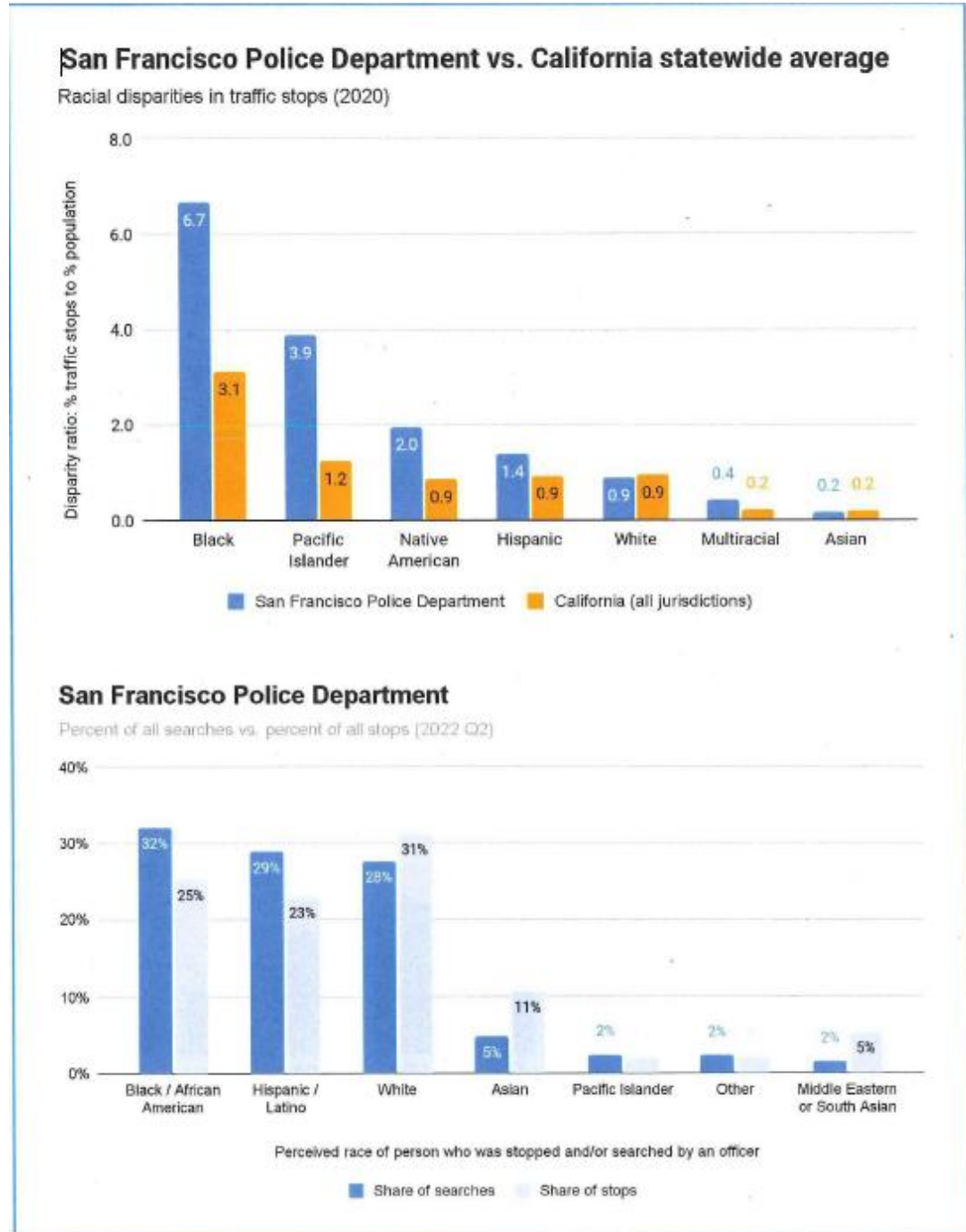
address both public safety as well as other concerns plaguing law enforcement – especially racial disparities, use of force and accountability. The Racial and Identity Profiling Act (RIPA) of 2015 was enacted in order to better identify and mitigate race-based and identity-based bias in policing as was the San Francisco 2016 counterpart, Administrative Code 96A. SFPD has undertaken consider training on implicit bias and DGO 5.17 makes clear that the SFPD is determined to address racial disparities in policing. Despite this ongoing work of the Department, the Commission and community advocacy, the racial disparities – in stops as well as treatment during stops – persists. Most troubling are SFPD’s disparities appear even higher than those reported statewide.

**The Persistence of Racial Disparities in Policing Require Approval of DGO 9.07.** On January 4, 2023, the [San Francisco Chronicle](#) reported on RIPA’s Sixth Annual Report just released. Statewide, the RIPA board concluded that drivers of color in California are far more likely than whites to be stopped by state and local law enforcement officers, and officers are 4 times more likely to request consent for vehicle search if the motorist is Black, 2.2 times as likely if the motorist is Latino, even though data from 2019 – 2021 “show a continued trend of officers being *least* likely find contraband in the possession of these groups as compared to those perceived to be White.” (Emphasis added.)

In San Francisco, the disparities in stops and searches are even more troubling, as reported to the Police Commission by the Human Rights Commission on December 7, 2022:<sup>1</sup>

---

<sup>1</sup> All three reports from the HRC may be found on the [Agenda](#) for the December 7, 2022 meeting of the Police Commission.



Sources: Racial Identity and Profiling Advisory Board: Annual Report 2022 (top), SFPD Quarterly Activity and Data Report Quarter 2 2022 (bottom)

The Sixth Annual RIPA Report noted that young Black and Latino males in particular “experience stark differences from their White peers in how they are treated during law enforcement encounter.” The researchers concluded that

unjustified vehicle stops have a serious impact on drivers' mental health for they experience "high rates of distress, a sense of injustice, feelings of hopelessness and even feelings of dehumanization." These findings are replicated by the exhaustive work of San Francisco's Human Right Commission as reported to the Police Commission on December 7, 2022:

"Many, many people – including both community members and sworn law enforcement officers alike – shared their personal experiences of being stopped, questioned and searched by police because of their race. They described being stopped by officers for unnecessary or illogical reasons...[and] that unnecessary stops created opportunity for racial harassment and violence from officers. Fear and trauma from these interactions stayed with community members and their family. They described being treated by officers in ways that felt demeaning or dangerous, [citing a long list of examples].<sup>2</sup>

**Research Supports Approval of DGO 9.07. DGO 9.07, as Proposed is a Thoughtful and Balanced Step to Address Racial Disparities.** The Police Commission, the Working Group, and a host of nonprofits undertook considerable research over time to craft a DGO that would target nine offenses linked to pretextual stops and racial disparities in order to assist the SFPD's efforts to reduce racial disparities while preserving public safety.

The initial draft DGO, supported by a broad [coalition](#) of community organizations was far more aggressive in banning a long list of traffic stops tied to racial disparities. The Commission worked closely with the SFPD and others to create a more moderate approach, and several concessions were reached to accommodate concerns by law enforcement and public safety activists despite evidence that a more aggressive DGO would be supported by research and best practices.

The approach of the DGO is certainly supported by the Center for Policing Equity (CPE) as well as the comprehensive work of the San Francisco Bay Area Planning and Urban Research Association (SPUR). In their Traffic Safety Recommendations [Report](#), the CPE goes farther than the proposed DGO and recommends that police departments "ban police stops for low-level violations not related to traffic safety" citing both the Commonwealth of Virginia and the City of Philadelphia's decisions to do just this. The current DGO draft targets and prioritizes the most often abused reasons for stops, providing discretion to officers noting that "nothing in this DGO prevents members from initiating a stop for any infraction or criminal offenses based on reasonable suspicion or probable cause" (Page 2, Section 9.07.03 POLICY. ¶ C.).

---

<sup>2</sup> HRC's report may be accessed on the Police Commission's website and agenda for December 7, 2022 as linked [here](#) at page 15..



The CPE also recommends, and the DGO addresses, pre-textual stops and investigatory questioning. The CPE recommends that officers should be prohibited from asking questions that go beyond the scope of the initial reason for the stop and the DGO addresses this directly and clearly in Section 9.07.04 LIMITED SEARCHES AND QUESTIONING.

The CPE also recommends the prohibition of searches based on the driver's consent unless officers have independent cause for search and the CPE recommends that police departments should document and regularly analyze all recorded reasons for stops and searches. The proposed DGO does a good job of prohibiting officers from seeking permission to search unless reasonable suspicion or probable cause for a criminal offense arises during the stop (Id., at ¶ B.) BASF is concerned that DGO may not go far enough to document stops as it appears documentation for the reason for the stop and the circumstances to conduct a consent search and/or asking any investigative questions is limited to circumstances in which the officer seeks permission to search or asks investigator questions. Perhaps this is sufficient at this juncture but BASF suggests revisiting the Data Collection and Reporting requirements if the data is insufficient for comprehensive analysis.

SPUR's comprehensive 54 page [presentation](#) to the Police Commission on December 14, 2022 provides an excellent overview of stops and analysis of stops by SFPD. The report's conclusion that many stops having nothing to do with road safety is well supported by the data. BASF believes it is useful to cite just a handful of SPUR's findings as they clearly make the point that currently, limited police resources are being unnecessarily drained by ineffective and problematic practices. For example, of the 4,122 stops for failure to display both license plates, only 6% of searches resulted in recovery of contraband and less than 1% resulted in discovery of a gun; of 4,086 stops for failure to display registration tags or expired registration, only 5% of searches resulted in recovery of contraband and fewer than 1% of stops resulted in recovery of a gun; of 714 stops for driving without illuminated brake lights, only 1% of searches resulted in recovery of contraband and no guns were discovered. The racial disparity documented in these stops is unacceptable by any standard and the costs to drivers for traffic citations have disproportionate impact on lower income people, plummeting our most vulnerable communities further into debt.

In conclusion, we must work together as a city to seek better solutions to traffic violations, particularly those tied to poverty. We propose a process for notification of financial assistance to those unable to comply with registration costs or car repairs. This is a longer term solution and BASF is committed to collaboratively crafting a solution for low-income car owners so they may become compliant. Advertising ways in which those in need may receive



financial assistance to become compliant and mailing citations with information on how to secure financial assistance to become compliant, would serve our city well and free up SFPD's limited personnel to attend to more serious public safety concerns.

In the meantime, we must end pretext stops and the resulting racial disparities. As well documented, pretext stops most often occur when officers stop motorists for offenses targeted by this DGO. Pre-textual stops not only increase and exacerbate harm to communities of color, and low income communities, they are illegal; pretext stops violate the equal protection clause of the United States Constitution and California's Racial Justice Act.

The proposed policy is needed to address persistent racial disparities; it is thoughtfully drafted to protect public safety by targeting only nine low-level traffic infractions – all of which may be enforced by other means when appropriate, and the policy creates a more than sufficient number of exceptions to permit officer discretion whenever there is a legitimate safety concern justifying the stop. Importantly, the DGO limits when officers may seek consent to search or ask investigatory questions beyond the reason for the stop. For all these reasons, the DGO is a moderate but important attempt to address what SFPD has to date, despite considerable efforts, been unable to accomplish – reduce racial disparities in low-level traffic stops.

Sincerely,

Yolanda Jackson  
Executive Director and General Counsel  
The Bar Association of San Francisco