

SAN FRANCISCO PUBLIC DEFENDER

MANOHAR RAJU – PUBLIC DEFENDER
MATT GONZALEZ – CHIEF ATTORNEY



January 10, 2023

The San Francisco Police Commission
San Francisco Police Headquarters
1245 3rd Street
San Francisco, CA 94158
sfpd.commission@sfgov.org

Re: DGO 9.07 — End Racially-biased Traffic Stops — SUPPORT

Dear President Elias, Vice President Carter-Oberstone, and Police Commissioners,

The San Francisco Public Defender's Office writes in strong support of San Francisco Police Department (SFPD) Department General Order (DGO) 9.07 and respectfully requests your **AYE** vote on the proposed policy. Currently under submission, DGO 9.07 would update SFPD's traffic enforcement policy to limit the use of racially biased traffic stops, limit consent searches and questioning during traffic stops, and improve traffic stop data collection and reporting requirements.

The San Francisco Public Defender represents more than 25,000 of some of the most vulnerable and underserved people in the San Francisco criminal legal system, most of whom are Black or brown community members. Our office has a constitutional duty to provide the most zealous representation to our clients—and, by extension, their families and communities. This duty compels us to speak truth to power and call out the abuses and overreach of the criminal legal system—including the abuses our clients experience at the hands of SFPD, whether it is the daily indignity of living in fear of an interaction with police *because of pretext stops* or the violence caused by those stops. For too long, we have seen the excesses of a department that seems to have little regard for our clients or their communities. Too often, our clients are targeted by police for merely walking, biking, or driving while Black or brown.

Because we see the harms that pretext stops have had, our office has long been at the forefront of pushing the Commission to end the practice. It is a form of harassment based on racialized beliefs of criminality. As a key stakeholder in the criminal legal system, we need—and indeed this City needs—evidenced-based community-centered solutions other than more arrests, more incarceration, and more generational trauma. We need healing and investment in tools that we know work: housing, education, infrastructure, jobs, and healthcare. And as we work to get there, this policy is a good start to re-envision what San Francisco can be and to

Adult Division - HOJ
555 Seventh Street
San Francisco, CA 94103
P: 415.553.1671
F: 415.553.9810
www.sfpdpublicdefender.org

Juvenile Division - YGC
375 Woodside Avenue, Rm. 118
San Francisco, CA 94127
P: 415.753.7601
F: 415.566.3030

Juvenile Division - JJC
258A Laguna Honda Blvd.
San Francisco, CA 94116
P: 415.753.8174
F: 415.753.8175

Clean Slate
P: 415.553.9337
www.sfpdpublicdefender.org/services

Community Justice Center
P: 415.202.2832
F: 415.563.8506

Bayview Magic
P: 415.558.2428
www.bayviewmagic.org

MoMagic
P: 415.567.0400
www.momagic.org

ensure that all San Franciscans, regardless of skin color, can thrive and live in peace and safety.

Traffic stops are the most common source of all community member interactions with police, and the extent and nature of racial disparities in San Francisco's traffic stops are long-standing, egregious, and unjustified. Recent SPUR analysis presented to the Commission on December 14, 2022¹ proves that racial disparities in how SFPD interacts with people they stop are sustained and troubling. Furthermore, the searches that often result from these stops have low "yield rates" for "contraband"² and are essentially a waste of City resources. People face starkly different experiences when interacting with SFPD based on their skin color, and it is up to the Police Commission to take immediate steps and enact policy changes to remedy racially biased policing.

As RIPA reports and academic literature have made clear,³ pretext stops are a poor investigative tool and instead generate anger and alienation among Black and brown communities. The mistrust generated is particularly acute within the demographic communities that receive extra police scrutiny, and we can no longer ignore the evidence and continue to discount complaints in communities of color about different standards for police encounters, nor can we ignore the collateral and sometimes deadly consequences. Pretext stops are applied unevenly across racial lines—Black and brown San Franciscans have been clearly targeted for more aggressive treatment—and these differences are not justified by differences in criminality. Communities of color have paid and continue to pay a tremendous social cost.

Victims of racially biased policing suffer through the humiliating, life altering, and dangerous consequences of these stops. These kinds of stops can lead to use of force and police misconduct and impose a severe burden on those oftentimes least able to bear it. The June 2022 University of California San Francisco report that found that San Francisco ranks as the worst county in the state for police-caused hospitalization rates for Black residents underscores the need to pretext stops now.⁴

¹ <https://sf.gov/sites/default/files/2022-12/PoliceCommission121422-SPUR-%20Traffic%20Stops%20in%20SF%20Presentation.pdf>.

² This number is often inflated because it includes items that have no nexus to criminal conduct such as cell phones, money, or credit cards.

³ See Coalition to End Biased Stops submissions to the Commission:

[https://sf.gov/sites/default/files/2022-](https://sf.gov/sites/default/files/2022-08/Supplemental%20Briefing%20from%20Coalition%20to%20End%20Biased%20Stops.pdf)

[08/Supplemental%20Briefing%20from%20Coalition%20to%20End%20Biased%20Stops.pdf](https://sf.gov/sites/default/files/2022-08/Supplemental%20Briefing%20from%20Coalition%20to%20End%20Biased%20Stops.pdf);

[https://sf.gov/sites/default/files/2022-](https://sf.gov/sites/default/files/2022-09/Supplemental%20Briefing%20Draft%20%28Oct.%206%20Meeting%29.pdf)

[09/Supplemental%20Briefing%20Draft%20%28Oct.%206%20Meeting%29.pdf](https://sf.gov/sites/default/files/2022-09/Supplemental%20Briefing%20Draft%20%28Oct.%206%20Meeting%29.pdf);

[https://sf.gov/sites/default/files/2022-](https://sf.gov/sites/default/files/2022-10/Coalition%20Supplemental%20Briefing%20WG%20Session%204.pdf)

[10/Coalition%20Supplemental%20Briefing%20WG%20Session%204.pdf](https://sf.gov/sites/default/files/2022-10/Coalition%20Supplemental%20Briefing%20WG%20Session%204.pdf).

⁴ <https://www.sfchronicle.com/sf/article/police-violence-Black-residents-17272732.php>

The recently published 2023 RIPA report focused squarely on reducing racial disparities in the criminal legal system by eliminating pretext stops. The Report definitively argues that ending pretext stops ***will not negatively impact public safety***:

*Reducing pretextual stops will not have a negative impact on public safety.*⁵

*A study of Missouri stop data found that reducing policing contacts for [...] certain traffic stops, which are more likely to be pretextual, had no negative effects on crime rates, meaning crime did not increase when police contacts decreased.*⁶

*Another review [...] found that the reprioritization of traffic stops to focus on public safety violations had positive effects on reducing motor vehicle injuries and racial disparities and did not increase non-traffic crimes.*⁷

Further, the report illustrates that pretext stops are an ***ineffective “crime-fighting” strategy***, leading other prominent jurisdictions to abandon the tactic altogether:

*Pretextual stops do not often result in the recovery of contraband or weapons.*⁸

*[The Public Policy Institute of California] conducted a study of RIPA data that revealed searches during traffic stops are generally less likely to lead to the discovery of contraband or evidence than when the stop is for reasonable suspicion, an outstanding warrant, or known parole/probation.*⁹

*A review of New York Police Department’s (NYPD) frisks for weapons showed that of nearly 300,000 people searched, weapons were only recovered 2% of the time. The NYPD report explains that pretextual stops – for both traffic and pedestrian stops – are not an effective crime reduction strategy.*¹⁰

*Another study in Washington, D.C. found that out of approximately 63,000 traffic stops, only 1% resulted in the seizure of weapons or drugs.*¹¹

*The Los Angeles Police Commissioner President William Briggs notes that pretextual stops are not effective at locating illegal firearms and they are not an effective crime reduction strategy.*¹²

Pretext stops are also ***costly***:

*Data show that officers spend a significant amount of time—nearly 80,000 hours in 2019 – on traffic stops that lead to no enforcement action or discovery of contraband. For local [police] departments, 28,000 of those hours were spent on enforcing non-moving violations, which are more likely to be pretextual.*¹³

⁵ 2023 RIPA Report at 13, <https://oag.ca.gov/system/files/media/ripa-board-report-2023.pdf>.

⁶ Id. at 64.

⁷ Ibid.

⁸ Id. at 13.

⁹ Id. at 64.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

¹³ Id. at 13.

And finally, pretext stops can be **deadly**:

*Nationally, in just a five-year span, law enforcement killed nearly 600 people after a stop for a traffic ticket. In California during that same five-year span, from 2017 to 2021, police killed 70 people during a traffic stop.*¹⁴

*More than 400 of the people who died during these stops were not in possession of “a gun or knife or under pursuit for a violent crime.”*¹⁵

In their 2022 annual report, the Committee on Revision of the Penal Code, a California-wide committee of legal experts, states, “pretext stops are ripe for racial profiling,” have “disturbing racial disparities,” and recommends, “prohibit[ing] police officers from stopping people for technical, non-safety-related traffic offenses.”¹⁶ This form of structural racism can be addressed via policy change without decreasing public safety. Pretext stops and the criminal legal system consequences—such as detentions, interrogations, arrests, court appearances, and incarceration—to say nothing of the collateral economic, psychological, privacy, dignitary, and physical consequences, can be excised and immediately improve the community’s quality of life. The proposed DGO represents a meaningful, tangible solution to the disparate outcomes. Regardless of the underlying causes or circumstances of these patterns in policing—be it explicit or implicit bias—ending pretext stops is feasible and has been proven to be effective at reducing attendant harms and with no adverse consequences.

Despite conducting implicit bias trainings,¹⁷ revamping the Department of Police Accountability,¹⁸ and attempting to shift the culture and practices of SFPD,¹⁹ the data undeniably demonstrates that SFPD is not balancing public safety needs equitably for community members. This policy will do the work SFPD seems incapable of doing and end as many as 10,000 unnecessary traffic stops in San Francisco every year. In truth, SFPD will not course correct if allowed to usurp your authority. Your mandate is not only to hold SFPD to the highest of standards, but

¹⁴ Id. at 63.

¹⁵ Ibid.

¹⁶ Committee on Revision of the Penal Code, Annual Report and Recommendations, at 32, http://www.clrc.ca.gov/CRPC/Pub/Reports/CRPC_AR2022.pdf.

¹⁷ See, e.g., <https://missionlocal.org/2020/12/former-bias-trainer-says-reinforced-narratives-about-black-people-as-criminals-by-nature-thrived-in-san-francisco-police-culture/>; https://www.sfexaminer.com/news/former-police-trainer-speaks-out-about-anti-black-bias/article_f183eac5-7188-5553-be21-9c0bccdc4a73.html. See also <https://www.npr.org/2020/09/10/909380525/nypd-study-implicit-bias-training-changes-minds-not-necessarily-behavior> (highlighting the limitations of implicit bias training).

¹⁸ See, e.g., <https://missionlocal.org/2022/08/is-police-accountability-working-in-san-francisco-dpa/>; <https://missionlocal.org/2022/08/is-police-accountability-working-in-san-francisco-commission/>; <https://missionlocal.org/2020/09/light-discipline-for-police-misconduct-is-the-norm-in-san-francisco/>.

¹⁹ <https://missionlocal.org/2022/08/activists-bring-heat-fiery-traffic-stop-discussion-sfpd/> (highlighting the work SFPD has done to teach SFPD officers about racism and police brutality in an effort to “change” SFPD culture).

also to minimize the harms it causes to already overpoliced and underserved communities.

From the beginning, this proposal has always been about the health and well-being of our entire San Francisco community. This DGO is specifically focused on eliminating those stops that present no public safety risk and brings SFPD's traffic enforcement policy into alignment with widely established best practices. Reducing pretext stops demonstrates San Francisco's ability to make the data-informed decision to join the other jurisdictions across the country that have already implemented similar effective policies.

The San Francisco Public Defender's Office urges the Commission to pass and implement this DGO in a timely manner to protect the safety and well-being of Black and brown community members. The DGO is the product of countless hours of working groups, listening sessions, police commission meetings, and advocacy by those most impacted by state violence. And it is a policy *every San Franciscan* should be proud because it will be the most comprehensive policy in the country. Justice Sonia Sotomayor perhaps best captured the reality of the harms pretext stops have visited upon people of color in her masterful dissent in *Utah v. Strieff*:²⁰

For generations, black and brown parents have given their children 'the talk'—instructing them never to run down the street; always keep your hands where they can be seen; do not even think of talking back to a stranger—all out of fear of how an officer with a gun will react to them...We must not pretend that the countless people who are routinely targeted by police are 'isolated.' They are the canaries in the coal mine whose deaths, civil and literal, warn us that no one can breathe in this atmosphere...Until their voices matter too, our justice system will continue to be anything but.

We respectfully request that you give credence to those members of our community who are disparately harmed by racially biased policing and act accordingly. On behalf of the San Francisco Public Defender's Office, please unanimously pass DGO 9.07 and end pretext stops in San Francisco.

Respectfully submitted,



Brian Cox
Integrity Unit, Director
San Francisco Public Defender's Office

Cc: San Francisco Board of Supervisors, Board.of.Supervisors@sfgov.org

²⁰ (2016) 579 U.S. 232, 254.