



November 10, 2020

**Re: Inspector General’s Report relative to the Review of Stops Conducted by the Los Angeles Police Department in 2019 [BPC #20-0162], and Field Officer’s Notebook, Form 15.03.00 – Revised; Consent to Search Verbal Advisement, Form 15.05.00 – Activated [BPC #20-0156]**

Dear Commissioners,

We the undersigned members of the PUSH L.A. coalition write to provide public comment on two action items on the Los Angeles Board of Police Commissioners’ November 17, 2020 meeting agenda: (1) the recommendations in the Inspector General’s report on stops conducted by the Los Angeles Police Department (LAPD), and (2) revisions to LAPD’s consent search procedures.

For the reasons discussed further here, both of the proposed action items are inadequate to address the serious racial injustices of LAPD’s stop and search practices--which are well-documented by the Inspector General’s report, the concurrently-presented California Policy Lab report, prior L.A. Times reporting, and testimony by community members, including members of PUSH L.A. The Commission’s action items are out of touch with specific solutions that PUSH L.A. and impacted community members have identified. Rather than or in addition to the proposed actions, you must commit to real change by answering the community’s long-standing demand for an immediate *end*—not superficial changes—to LAPD’s pretextual stops and searches.

The PUSH L.A. Coalition

PUSH L.A. (Promoting Unity Safety & Health Los Angeles) is a broad coalition of advocacy and interfaith groups challenging the city to “Reimagine Protect and Serve” by shifting investments from criminalization and punishment of Black and Brown residents to community-based support and services. PUSH L.A. includes the American Civil Liberties Union of Southern California; Advancement Project CA; Black Lives Matter- Los Angeles; Brotherhood Crusade; Brothers, Sons, Selves; Children’s Defense Fund- California; Community Coalition; Coalition for Humane Immigrant Rights (CHIRLA); LA Voice; Labor Community Strategy Center; Los Angeles Community Action Network (LA-CAN); Million Dollar Hoods; SEIU 2015; SEIU Local 99; Social Justice Learning Institute; and Southern Christian Leadership Conference (SCLC), Southern California. We represent a membership and constituency base of hundreds of thousands of Angelenos, many of whom reside in the communities most directly impacted by aggressive and discriminatory policing tactics described in the OIG’s reports.

PUSH LA was formed in response to decades of racist policing that has plagued Black and Brown communities in Los Angeles. The coalition launched after data analyses in 2019 revealed that LAPD Metro Division officers stop and arrest Black people more than five times their share of the city's population. The reality for Black and Brown Angelenos is that going about our every-day activities can turn into life-or-death situations when police choose to follow, surveil, harass, and harm us based on the color of our skin, our accents, misplaced stereotypes, or where we live.

**In response to this reality and corroborating L.A. Times reporting,<sup>1</sup> PUSH L.A. has made three baseline demands:**

- 1. An immediate end to the pretextual stops that are used to search, traumatize, and racially profile the city's Black and Brown residents -- and as part of this demand, immediate withdrawal of the Metro Division from South Los Angeles.**
- 2. For LAPD to officially and publicly admit to racial profiling and issue an apology to all residents of South LA and elsewhere in the city who've been unjustly stopped, searched, and harassed.**
- 3. Discipline and removal of officers who engage in unwarranted pretextual stops, who have patterns demonstrative of racial profiling, or who engage in misconduct and abuse.<sup>2</sup>**

The Inspector General's Report and Recommendations [BPC #20-0162]

The Inspector General's report is a detailed and incisive examination of the racial disparities arising out of LAPD's pattern and practice of pretextual stops and searches. Moreover, this report is only the latest in a series of reports that has confirmed the discriminatory policing experienced by Black and Latinx community members--including fabricating evidence of gang affiliation, targeting individuals based on unsubstantiated designations as "chronic offenders," harassing people without permanent housing, applying excessive force upon people suffering from mental health crises, and routine violations of procedural justice tenets. While some of these reports have recommended discontinuing the practices that allow for--and result in--unlawful discrimination, the recommendations in the Inspector General's report on LAPD's pretextual stops and searches fall far short of amounting to a response that will bring about meaningful change.

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<sup>1</sup> See, e.g., Ben Poston & Cindy Chang, "LAPD searches blacks and Latinos more. But they're less likely to have contraband than whites," L.A. Times (Oct. 8, 2019), available at <https://www.latimes.com/local/lanow/la-me-lapd-searches-20190605-story.html>;

Cindy Chang & Ben Poston, "Stop-and-frisk in a car: Elite LAPD unit disproportionately stopped black drivers, data show," L.A. Times (Jan. 24, 2019), available at <https://www.latimes.com/local/lanow/la-me-lapd-traffic-stops-20190124-story.html>.

<sup>2</sup> More information on PUSH L.A. and our demands is available at <https://pushla.org/>.

- *Pretextual Stops*

The Inspector General's report recognizes that LAPD employs a strategy of using stops for traffic or other minor violations as a pretext to investigate detained individuals to identify or suppress more serious crimes. While it finds that this policing strategy is "of limited effectiveness" in addressing crime, it also concludes that this practice results in significant racial disparities in how often people of color are stopped and searched by LAPD officers compared to white people. Specifically, Black residents make up approximately 9 percent of the population of the City, yet account for 27 percent of the people stopped by LAPD. According to the Inspector General, this occurs despite the fact that white people are more likely to be found in possession of contraband than Black people. However, none of the Inspector General's recommendations actually call for an end to the stops, let alone clear limits that would address well-documented and persistent invidious harms inflicted upon communities of color.

Instead, the Inspector General's recommendations merely call on the Department to "evaluate," "curtail," and "refocus" its strategies (Recommendations A(1)-(2), (4)-(5)), "consider" the legal and policy implications of pretextual stops (Recommendations A(2), B(2)), and set aspirational goals to eventually eliminate racial disparities (Recommendations A(3), B(1)). Such vague recommendations threaten to let individual officers retain substantial discretion to conduct pretextual stops. And the Inspector General's own report shows that the more discretionary the stops, the more racist the outcomes.

To address the racial disparities that inevitably result from any practice of using pretextual stops for suppression policing, other jurisdictions have prohibited pretextual stops outright. For example, the Washington State Constitution forbids use of pretext as a justification for warrantless search or seizure. Similarly, the Seattle Police Department's policy manual states that "traffic violations will not be used as a pretext to investigate unrelated crimes." Along these lines, LAPD's policy must, at minimum, expressly declare that pretextual stops are banned. And that policy must be followed in practice. The LAPD should publish its policy change as well as commit to providing regular stop and search data updates to the Commission.

- *"Consensual" Searches*

The Inspector General's recommendation on consensual searches is also an inadequate response to its damning findings on the racially-biased use of those searches. The report finds that there are significant racial disparities in who is searched following a stop; that Black and Latinx people are more likely to be subjected to such "higher-discretion" searches; and, as mentioned above, they are less likely than white people to be arrested or found in possession of contraband. The report additionally points out that the recovery rate for serious contraband in such high-discretion searches was a mere *two percent*. Thus, the report reflects that LAPD's racially-discriminatory consent search strategy is not an effective tool for locating or eliminating dangerous instruments related to the commission of crime, but rather erodes public safety by alienating the communities LAPD purportedly serves through increasing the rate of prolonged, intrusive, and, all too often, traumatizing detentions.

Nevertheless, the Inspector General’s recommendations do not call for an end to consent searches. Rather, they call for officers to obtain affirmative verbal consent for searches and to provide documented advisement to persons searched. Such measures do not relieve Black and Brown community members of the indignity, trauma, waste of time and livelihood, and threat to their physical safety that being targeted for such searches entails. As Commissioners suggested at the last Commission meeting, encounters with police can be so inherently coercive that any “consent” given may not be authentic. Additionally, in light of the Inspector General’s findings that LAPD officers do not consistently comply with LAPD procedures and already underreport stops and searches, it is unclear how mere changes to procedure and additional documentation requirements will meaningfully protect people targeted by such searches. The harm identified in the Inspector General’s report--that Black and Latino community members are disproportionately subjected to invasive searches and prolonged detentions under a suppression policing strategy--will be in no way alleviated by its proposed solution.<sup>3</sup>

Consent searches, like pretextual stops, are law enforcement tactics that will inevitably be used to disparately harm Black and Latino individuals if they are permitted. Other jurisdictions have prohibited consensual searches in the absence of independent reasonable suspicion or probable cause of criminal activity precisely because to allow otherwise will result in additional racial bias in policing. For example, Rhode Island’s Racial Profiling Prevention Act states as follows:

(a) Unless there exists reasonable suspicion or probable cause of criminal activity, no motor vehicle stopped for a traffic violation shall be detained beyond the time needed to address the violation. . . .

(b) No operator or owner-passenger of a motor vehicle shall be requested to consent to a search by a law enforcement officer of his or her motor vehicle which is stopped solely for a traffic violation, unless there exists reasonable suspicion or probable cause of criminal activity.

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<sup>3</sup> The Inspector General’s recommendation on consensual searches also contradicts its other recommendations and Fourth Amendment law. In Recommendation A(1), the Inspector General recognizes that “[w]hen a stop is conducted on the basis of a minor code violation, an officer should not extend the length or scope of the investigation beyond what is necessary to address the violation unless there is reasonable suspicion or probable cause of other criminal activity.” By going through the process of obtaining affirmative consent for a search unsupported by reasonable suspicion or probable cause of other criminal activity sufficient to otherwise justify the search, and by providing the recommended advisement about the search, then conducting the search, then additionally explaining the purpose of the search, the officer will inevitably prolong the length and scope of the investigation.

Indeed, by conducting consent searches following pretextual traffic stops, LAPD officers likely violate the Fourth Amendment by extending the duration of stops beyond what is necessary to address the traffic violation. *See U.S. v. Landeros*, 913 F.3d 862 (9th Cir. 2019). Both the Department’s current practices and the Inspector General’s recommendations fail to adequately acknowledge this Fourth Amendment limitation on LAPD’s pretextual stop and consent search practices. For this reason and others, the Inspector General’s recommendation that the Department “continue to provide ongoing training to officers on Fourth Amendment principles” is unlikely to adequately safeguard the constitutional rights of community members. The Department should invite civil rights and civil liberties experts to conduct independent training and review of LAPD’s Fourth Amendment training materials.

Since the state banned such consent stops in 2016, it has identified no negative impact on public safety.<sup>4</sup> Similarly, the state of Connecticut passed a Police Accountability Law this year that provides:

“No law enforcement official may ask an operator of a motor vehicle to conduct a search of a motor vehicle or the contents of the motor vehicle that is stopped by a law enforcement official solely for a motor vehicle violation.”

Conn. Gen. Stat. § 29. Given its track record, LAPD must take similarly assertive action to eliminate racial injustice in its policing and, at a minimum, prohibit searches based solely on consent and requests for consent to search following traffic stops, along with pretextual stops.

- *Policy on Stops & Post Stop Activities*

The Inspector General recommends that LAPD adopt a policy that sets forth “legal and policy considerations for officers in conducting stops” as well as “rules and parameters related to post-stop activities,” without specifying the recommended substance of such a policy. For the reasons stated, LAPD should have a policy that specifically prohibits pretext stops and consent searches.

Additionally, the policy should prohibit officers from asking whether someone is on probation or parole during stops. The Inspector General’s report found that LAPD’s practice of inquiring into parole or probation status and criminal history during pretext stops leads to prolonged questioning -- and that such questioning is more likely to occur in stops of Black people, even though nearly two-thirds of people asked were not on parole or probation. Currently, LAPD training instructs:

“Officers must remember that trust and a sense of fairness or non-bias can be quickly lost when they unnecessarily ask a person if they are on probation or parole. Therefore, such questions should only be asked when appropriate, depending on the information that is collected.”<sup>5</sup>

The training bulletin does not define what “appropriate” means, nor otherwise set any clear limitations on when officers may ask about probation or parole status. And it falls far short of adequately describing the stigmatizing effects, dignitary harms, trauma, and potential constitutional violations that are caused by LAPD’s practice of disproportionately subjecting Black community members to prolonged questioning about probation, parole, and criminal history during stops. The only sufficient solution is a clear prohibition against such questioning. Any officer safety issues can be addressed by actions that officers are legally justified in taking based on an articulable, particularized, and objective factual basis for suspecting that a person may be armed and dangerous.

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<sup>4</sup> See <http://www.dot.ri.gov/community/CCPRA/index.php>.

<sup>5</sup> “Contacts with the Public – Part II Procedural Justice,” LAPD Training Bulletin Volume XLIX, Issue 3, April 2020.

- *Accountability Measures*

We agree that regular audits and review of stops, searches, and seizures are needed to hold officers accountable for misconduct. (Recommendation F(1)). Consistent with PUSH L.A.'s third demand, set forth above, LAPD should commit to disciplining officers that conduct pretextual stops or searches based on "consent" without reasonable suspicion or probable cause and remove from our communities officers who engage in a pattern of such conduct.

- *Considering Other Approaches*

The Inspector General calls on the Commission to consider "other approaches to addressing minor equipment and technical violations that are not directly related to public safety." (Recommendation A(4)). In light of the issues raised by the OIG report and the threat to life--particularly Black lives--posed by armed officers engaged in traffic enforcement, many cities including Los Angeles are considering shifting traffic enforcement away from police to Departments of Transportation. PUSH L.A. supports shifting traffic enforcement away from LAPD and increasing investment in traffic safety strategies that are more effective than enforcement. We urge the Commission to support these shifts to the full extent of its abilities.

Protocols for Consent Searches [BPC #20-0156]

For the reasons stated above in our comments on the Inspector General's recommendation on consensual searches, changing LAPD's protocols for consent searches does not meet your responsibility to advance racial equity nor protect our community members from the dangers, trauma, and indignities of such targeted searches. Instead of tinkering at the edges of this unjust practice, **LAPD should prohibit consent searches as other jurisdictions have safely done.**

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The PUSH L.A. coalition agrees with the OIG that the Department should take proactive steps to eliminate racial disparities in stops. The proactive steps necessary are not laid out in the action items currently before the Commission, however, but in the demands that our coalition has asserted for nearly two years. For all the reasons stated here, we urge the Commission to stop the stops.

Sincerely,

ACLU of Southern California, Hector Villagra  
Advancement Project California, John Kim  
Black Lives Matter - Los Angeles, Paula Minor  
Children's Defense Fund - California, Shimica Gaskins  
Coalition for Humane Immigrant Rights (CHIRLA), Angelica Salas  
Community Coalition, Alberto Retana