PROPOSED LAPD POLICY MODERNIZING SPECIAL ORDER 40

SPECIAL ORDER

SUBJECT: IMMIGRATION STATUS AND BIAS-FREE POLICING

PURPOSE:

Los Angeles is home to millions of people from all walks of life, of different races, religions, sexual orientations, and national and ethnic origins. The Department values and celebrates this diversity, which makes our community strong and vibrant.

A relationship of trust between the Department and the City's residents, regardless of race, religion, sexual orientation, national origin, ethnicity, or immigration status, is essential for accomplishing core Department functions, including protecting the safety and civil and human rights of all residents.

The enforcement of federal immigration law falls exclusively within the authority of the federal government. The Department will not engage in law enforcement activities based solely on someone's immigration status. The Department does not work together with the Department of Homeland Security on deportation efforts. That is not the job of the Los Angeles Police Department.

The Department's commitment to equal enforcement of the law and equal service to the public regardless of immigration status increases the Department's effectiveness in protecting and serving the entire community. All individuals, regardless of immigration status, should feel secure that contacting law enforcement will not make them vulnerable to harassment, arrest, or deportation.

Voluntary assistance in the enforcement of federal civil immigration law would drain already-limited Department resources; detract from the Department's core mission to create safe communities; and make it difficult to maintain trust between the Department and the City's residents, thereby threatening the safety and well-being of City residents.

Assistance in the enforcement of immigration law could also lead to profiling based on race, ethnicity, and national origin in violation of the United States and California Constitutions and state and federal anti-discrimination laws.

Since 1979, the Department has followed an existing policy, Special Order 40, concerning its engagement with the City's undocumented population. However, this policy has not been revised since it was established in 1979 and therefore does not reflect nearly four decades of important changes in law and practice, including:

- The growing intertwining of immigration enforcement with local criminal justice systems that has resulted in the deportations of hundreds of thousands of immigrants,

many of whom are longtime residents of the state of California, with deep connections to their families and communities in our state.

- The Los Angeles Police Department's adoption of a pioneering community policing model that is harmed when immigrant residents are afraid of contacting the police to report a crime or cooperate with law enforcement due to a fear that any law enforcement contact could result in their deportation.

- The 2001 Report of the Rampart Independent Review Panel, following the now infamous 1990s LAPD Rampart Scandal, which recognized the harms that result from the Department's collaboration with federal immigration authorities and the need for revisions to Department policy and practice.

- The 2007 Los Angeles City Council resolution reaffirming Special Order 40 which recognized that promoting participation and involvement of the undocumented immigrant community in police activities increased the Department's ability to protect and serve the entire community.

- The United States Supreme Court's pronouncement in *United States v. Arizona*, 132 S. Ct. 2492 (2012), that removal is a civil matter and that state officers generally may not arrest immigrants based solely on possible removability.

- The growing public policy of the state of California—as reflected in state laws such as the TRUTH Act and the TRUST Act—to disentangle ICE deportation programs from local law enforcement agencies and to increase the transparency and accountability of immigration enforcement in the state; and—as reflected in a recent state audit and the passage of AB 2298—to acknowledge and remedy the inaccuracies in California's shared gang databases and to prevent the unintended or inappropriate sharing of that information.

- Recent court decisions that have raised Constitutional concerns regarding the enforcement of immigration detainers.

- The recent resolution of the legislature of the state of California declaring that California opposes "mass deportation strategies that needlessly tear families apart, or target immigrants for deportation based on vague and unjustified criteria."

POLICY:

I. The Department is committed to equal enforcement of the law and equal service to the public regardless of race, nationality, ethnicity, or immigration status.

II. The Department is committed to bias-free policing.

III. The immigration status of individuals is not a matter for police action.

IV. The Department shall investigate criminal activity without regard to an individual's actual or perceived immigration status.

V. The enforcement of civil and criminal federal immigration laws falls exclusively within the authority of the federal government.

VI. The Department shall not initiate police action with the objective of discovering an individual's immigration status.

VII. The Department shall not attempt to determine the immigration status of crime victims, witnesses, suspects, or arrestees unless necessary to perform Department duties or required by law.

VIII. The Department shall not conduct or participate in efforts to enforce federal immigration law. The Department shall not undertake joint efforts with federal, state or local law enforcement agencies, to investigate, detain or arrest individuals for violations of federal immigration law.

IX. The Department shall not investigate, detain, arrest, or book an individual for violations of federal criminal immigration law, including Title 8, Sections 1304, 1325 or 1326 of the United States Immigration Code.

X. The Department shall not permit any collateral arrests for immigration enforcement purposes in connection with Department operations.

PROCEDURE:

I. Non-Collection of Immigration Status Information.

A. No Department officer, employee or agent shall request citizenship or immigration status of any individual unless necessary to perform Department duties or required by law.

B. This section shall not prevent the Department from responding to a request for assistance from residents to obtain a benefit under federal immigration law, such as 8 U.S.C. § 1101(a)(15)(U), 8 U.S.C. § 1101(a)(15)(T).

II. Immigration Enforcement.

A. In connection with the Department's commitment to bias-free policing, no Department monies, facilities, property, equipment or personnel shall be used for immigration enforcement, including but not limited to:

1. Identifying, investigating, arresting, detaining or assisting in the identification, investigation, arrest or detention of any person on the basis of a suspected violation of immigration law;

2. Responding to any civil immigration warrant or request, for immigration purposes, to detain or notify federal authorities about the release of any individual;

3. Making individuals in Department custody available to federal immigration authorities for interviews for immigration purposes; and

4. Providing federal authorities with non-publicly available information about any individual for immigration purposes, other than information regarding the individual's citizenship or immigration status, including by providing access to Department databases, except where required by state or federal law.

B. Nothing in this section shall prevent the City from responding to a lawfully-issued judicial criminal warrant, or court order issued by a federal or state judge.

III. Training and Oversight.

A. Training protocols shall be developed.

B. The Department shall document in writing all requests from federal immigration authorities for assistance from the Department. This includes requests to use money, facilities, property, equipment, personnel, or databases, or to receive non-publicly available information about any individual. The recording shall include the time and date of contact, the identities of the Department officer and immigration officials, and the specific purpose and outcome of the contact. This written record shall be considered a public record pursuant to the California Public Records Act, and should be readily available for audit and/or review by the Police Commission and the Office of the Inspector General.

C. The Office of the Inspector General shall accept and review complaints from any entity or individual regarding violations of this Order. The Inspector General shall produce a public report every 90 days regarding complaints received, responses to complaints by County departments, agencies, commissions and employees, and Inspector General's efforts to investigate and resolve such complaints.

D. The Inspector General shall conduct regular and periodic audits of all incidents involving violations of this order. This review will evaluate the quality of investigations and evaluate the veracity of their findings. The

Inspector General will report his/her findings in writing to the Police Commission.

E. The Department shall create a new bias category of "immigration bias." The IAG, Professional Standards Bureau shall investigate and adjudicate complaints of immigration bias consistent with its biased policing protocols. The Internal Affairs Group shall include its findings of "immigration bias" complaints in its Biased Policing and Mediation Quarterly Report to the Board of Police Commissioners.

IV. Construction

This policy is to be construed in accordance with 8 U.S.C. § 1373(a) which provides "Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [ICE] information regarding the citizenship or immigration status, lawful or unlawful, of any individual."

RESPONSIBILITY: