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April 18, 2019

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SUBJECT: REPORT BY THE INSPECTOR GENERAL

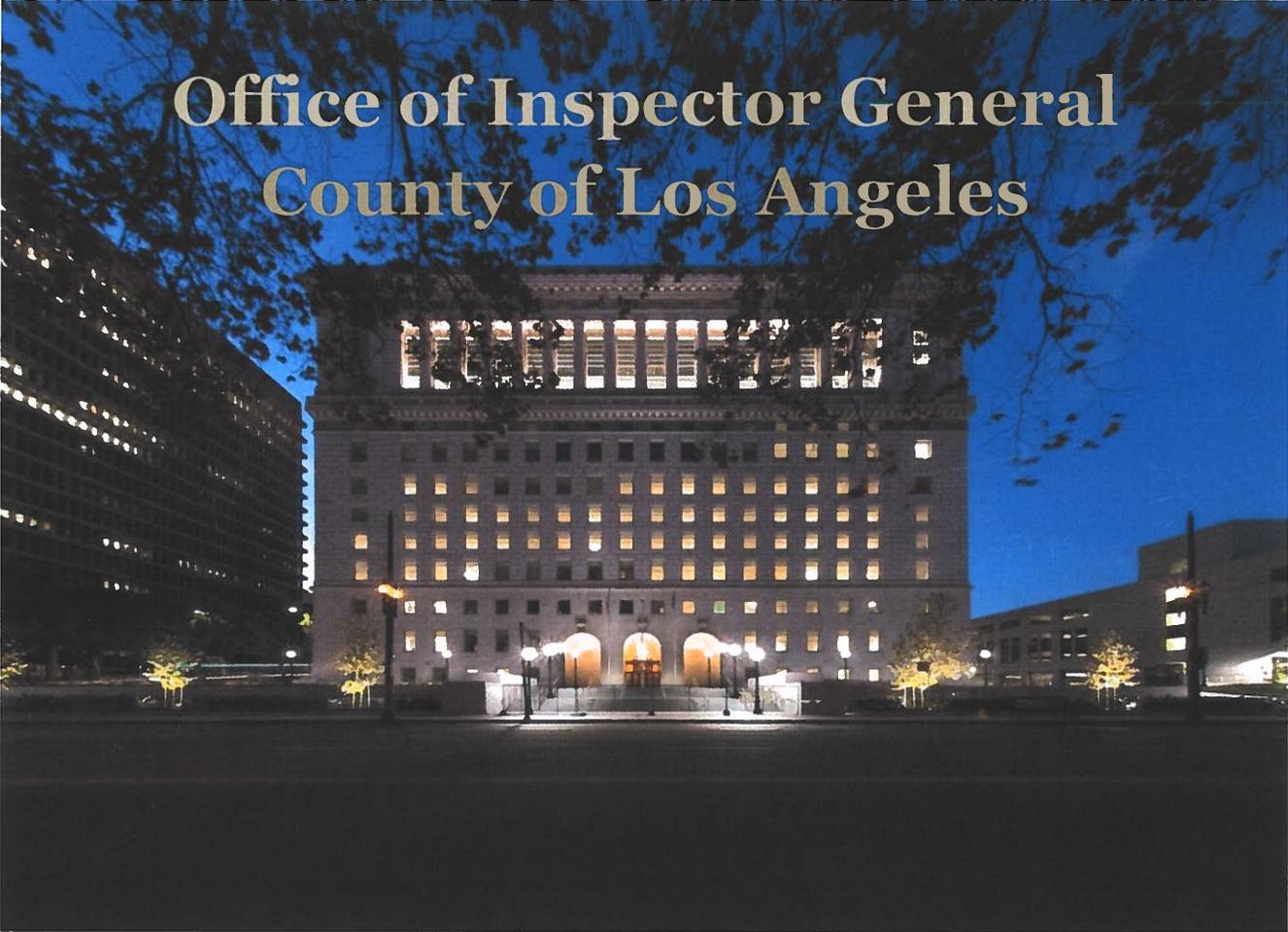
Enclosed please find the Office of Inspector General's Report on the Los Angeles County Sheriff's Department's Santa Clarita Valley Domestic Highway Enforcement Team.

If you have any questions concerning this report, please contact me at (213) 974-6100 or Chief Deputy Daniel Baker at (213) 974-6100.

RAC:sg

Enclosure

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Office of Inspector General
County of Los Angeles

The Los Angeles County Sheriff's Department's
Santa Clarita Valley
Domestic Highway Enforcement Team

April 2019

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INTRODUCTION

On October 4, 2018, the Los Angeles Times published an article entitled, "L.A. County deputies stopped thousands of innocent Latinos on the 5 Freeway in hopes of their next drug bust." The article stated that more than two-thirds of the drivers pulled over by the Los Angeles County Sheriff's Department's Santa Clarita Valley Domestic Highway Enforcement Team (DHET or Team) were Latinos.

In response to that article and at the request of a Board of Supervisors' office, the Office of Inspector General (OIG) reviewed and analyzed the DHET's policies, procedures, and practices, and has prepared this report, which describes the DHET's creation and assesses its training, practices, traffic-stop data and related prosecutions, and the Department's supervision of the Team. Based on our review and analysis, this report also has twenty-six recommendations for the Los Angeles County Sheriff's Department (Department).

According to the Department, the DHET was created in response to Santa Clarita Valley-area community members' concerns about what the Department was doing to stop the flow of drugs into their communities. The DHET's purpose was to disrupt the flow of contraband and proceeds from the narcotics trade that were believed to be traversing the Interstate-5 freeway corridor through the Santa Clarita Valley station's jurisdiction (i.e., the stretch of the I-5 freeway between State Highway 14 to the south and the Kern County line to the north (the I-5 corridor)).

Our review and analysis of the DHET's traffic-stop data for the six-month period from April through September 2018 shows that the DHET conducted a total of 976 traffic stops involving 1,015 vehicle occupants¹ on the I-5 corridor. Of that total, 67.9% of the occupants of the vehicles stopped were Latino.² Additionally, out of 322 searches to which drivers consented (i.e., a "consent search"), 81.7% were of vehicles occupied by Latinos. Of the 245 persons detained by the DHET in "back seat detentions"³ to investigate whether those persons were involved in unlawful conduct, 216 (88.2%) were Latino.

Only twenty-six stops (2.7% of total stops) reviewed by OIG staff resulted in arrests (thirty-six persons were arrested) and only twenty-one of those stops (2.1% of total stops) resulted in narcotics-related arrests. Thirty-three (91.7%) of

¹ A single traffic stop of a vehicle may result in contacts of multiple individuals when the vehicle is occupied by more than one person.

² In comparison, only 43.2% of all drivers stopped by California Highway Patrol officers on the same stretch of the I-5 freeway were Latino.

³ The Department defines a "back seat detention" as ". . . when an individual is being securely detained in the backseat of a patrol vehicle." See LASD AAB's audit report, Detention of Individuals and Data Collection Audit-Palmdale Sheriff's Station, No. 2016-2-A, December 2016, page 4, footnote 11.

the thirty-six persons arrested were Latino. While the DHET was able to confiscate drugs, money, and guns during the time period examined, its effectiveness is difficult to gauge. Moreover, the impact on Latinos, along with other issues more fully addressed below, have the potential to negatively impact the public's trust in the Department and cause concerns about the overall effectiveness of the DHET's program.

BACKGROUND OF THE SANTA CLARITA VALLEY DHET

According to Santa Clarita Valley Sheriff's Station management staff,⁴ the DHET was created after community members at public forums began asking what the Department was doing to stop the flow of drugs into their communities. Management staff reported there had been twelve opioid overdoses in the Santa Clarita area at that time, up from seven in 2011. As a result of this public appeal, management staff began looking at the possibility that the I-5 corridor was being used as a thoroughfare to move drugs from the Mexican border to parts north and then to move drug proceeds and guns south to Mexico. In 2012, they launched a three-month DHET pilot program to assess the effectiveness of a highway interdiction team. The results of the pilot program confirmed for the Department that I-5 and state highways 14, 126, and 138 were active narcotics-trafficking corridors.

During those initial three months, management staff reported that deputies seized \$8 million worth of narcotics (street value) and more than \$379,000 in drug monies, and arrested ninety-two suspects. After the pilot program concluded, the then-captain of the Santa Clarita Valley Station authored a written proposal, or "White Paper," setting forth the narcotics problem in the area, the perceived effectiveness of the pilot program, and the proposed structure of the DHET. The White Paper also indicated that the team would "develop and implement guidelines and procedures to safely conduct interdiction traffic stops on the roadway" and would record the stops to "demonstrate that people of all races, nationalities, sex, sexual orientations, etc. are being contacted and checked, proving [sic] clear documentation and evidence that racial profiling is not occurring."⁵ Department staff also proposed extending the DHET into the 2012-2013 fiscal year. However, written policies or unit orders were never developed or implemented to provide the DHET members with guidance on how traffic stops should be conducted or documented. Moreover, supervisors were never required to audit or review data, video

⁴ All references to management staff or personnel are to sworn personnel charged with supervising the DHET at the Santa Clarita Valley Station, starting with the sergeant in charge of the team, a lieutenant, the captain of the station, and the chief of North Patrol Division.

⁵ Becker, Paul. July 12, 2012. "Los Angeles County Sheriff's Department, Santa Clarita Valley Sheriff's Station, 'White Paper' Domestic Highway Enforcement Program."

recordings, or case dispositions to ensure deputies were not engaging in conduct that could be interpreted as unlawful profiling.

According to Department management, the "DHET is a patrol oriented, patrol-based team . . . [that] follow[s] all patrol policies and procedures." Additionally, the Team was trained in the area of drug interdiction and has collectively completed hundreds of hours of specialized training in this area.

Since its inception, the DHET was comprised of one sergeant, four deputies, one part-time narcotics detective, and a specially trained drug-detection dog. It was associated with the Los Angeles High Intensity Drug Trafficking Area (LA HIDTA)⁶ and the Los Angeles Regional Criminal Information Clearinghouse (LA CLEAR),⁷ and also collaborated with the Federal Bureau of Investigation (FBI) and the federal Drug Enforcement Administration (DEA). The Team was operational until November 16, 2018, when it was suspended by then-Sheriff Jim McDonnell while the Department's Audits and Accountability Bureau (AAB) conducted an internal review⁸ and the OIG issued this report.

The Department reports that the vast majority of the DHET's traffic stops were based on vehicle code violations observed by Team members. The DHET relies on so-called "pretextual" traffic stops, which are allowed under the law, to carry out its drug-interdiction efforts. Generally, routine pretextual traffic stops occur as follows: a deputy identifies a motorist whom he or she believes may be involved in illegal narcotics trafficking based on specific factors. Those factors, however, do not on their own legally justify a stop and investigation. To formulate a legal basis to stop the motorist, the deputy follows the motorist to identify a traffic violation that will then allow him or her to legally stop the vehicle. That violation then serves as the "pretext" to conduct a narcotics investigation.

The tactics used by the DHET are similar to those used by other highway interdiction operations that began as a result of the war on drugs in the 1980s. As

⁶ HIDTA is a drug-prohibition enforcement program run by the United States Office of National Drug Control Policy. It was established in 1990 after the Anti-Drug Abuse Act of 1988 was passed. HIDTA provides assistance to federal, state, local, and tribal law enforcement agencies operating in areas determined to be critical drug-trafficking regions of the United States.

⁷ The Los Angeles County Police Chief's Association along with the heads of the California Bureau of Narcotics Enforcement and the Los Angeles County Sheriff's Department came together and formed LA CLEAR in response to the drug crisis. LA CLEAR provides strategic investigative research and post-seizure analysis; tactical case-support analysis; electronic surveillance and operational support; as well as training and conference opportunities to more than 230 agencies in the LA HIDTA.

⁸ On March 20, 2019, the AAB issued a draft report that is currently under review by department executives.

law enforcement agencies developed strategies to identify individuals trafficking drugs and contraband, the DEA developed a program known as "Operation Pipeline,"⁹ which provided specialized training on identifying individuals trafficking drugs and contraband. Additionally, in the 1990s, the California Highway Patrol had a program very similar to the DHET. That program was the subject of a lawsuit claiming the CHP was engaged in racial profiling. The lawsuit was settled in 2003 with a requirement that the CHP implement a policy prohibiting racial profiling. Additionally, the CHP implemented a policy prohibiting officers from conducting traffic stops "for the primary purpose of drug interdiction in the absence of probable cause or reasonable suspicion to believe the motorist or an occupant of the vehicle is involved in illegal drug related activity." Consistent with case law, the CHP's policy further provides that traffic stops "shall not extend beyond the time necessary to address the traffic violation unless an officer has reasonable suspicion or probable cause of criminal activity." As a result of the settlement, the CHP required that officers collect certain data and created an internal auditor position to review and analyze the data.

TRAINING

OIG staff reviewed the training records of all the supervisors and deputies¹⁰ who have been assigned to the DHET during its existence (2012-2018). The records¹¹ were provided by the Department's Training Bureau and Santa Clarita Valley Station personnel.

The focus of this training review and analysis is broken into three areas: (1) training related to highway drug-interdiction investigations; (2) training on potential issues commonly associated with conducting this type of focused enforcement effort, namely, racial profiling and cultural awareness; and (3) training specific to supervisors. Because OIG staff did not attend any of these trainings, their quality could not be assessed.

⁹ Sullivan, Larry, E., Encyclopedia of Law Enforcement, Volume 3, at page 631.

¹⁰ Two sergeants, ten deputies, and one reserve deputy.

¹¹ The records consisted of: California Commission on Peace Officers Standards and Training (POST); the Department's Training Records System (TRS); the Department's Learning Management System (LMS); the Los Angeles County Learning Net; and Santa Clarita Valley Station internal training records. Note: The POST record for one of the sergeants was not provided as he has retired and the Department reports the record is no longer available.

Highway Drug-Interdiction Training

In our review of the records, twelve of the thirteen members of the DHET team attended highway drug-interdiction training at various times while assigned to the Team. Only the reserve deputy assigned to the Team lacked any such formal training. The training records show that the twelve members received 3,642 hours of training in a total of 104 classes. The fewest number of classes attended by a member was one and the most attended by a member was nineteen. As to the range of hours of training received by each member, the fewest was 40 hours and the most was 658 hours. In addition, the dog handler with the Team attended 248 hours of training related to the deployment of a dog in narcotics investigations.

Of the 104 classes attended, 89 were provided through private organizations that specialize in drug-interdiction training. A total of sixty-four classes were offered through the National Criminal Enforcement Association (NCEA), nineteen were offered through Triple I Solutions and six were offered through Desert Snow Training.¹² The remaining fifteen classes attended by the team members include classes sponsored by the DEA, the HIDTA-Domestic Highway Enforcement Initiative, and the Drug Interdiction Assistance Program.

Of the sixty-four NCEA classes attended by team members, forty-four were at a 40-hour National Interdiction Conference held in various cities in the country between 2012 and 2018. The conference agendas provided to OIG staff for review by NCEA show topics such as Ethics in Criminal Patrol; Passenger Vehicle Interdiction; Hidden Compartment Demonstrations; and Commercial Vehicle Interdiction. Other sessions offered included: in 2012, the Use of K-9s in Criminal Interdiction, and ICE Bulk Cash Smuggling Overview; in 2013, Roadside Interviews, and Court Room Testimony; in 2014, Human Behavior-Recognizing Criminal Indicators, and Rental Vehicles used in Criminal Activity; in 2015, Creating and Supervising Interdiction Teams, and What Exactly is a Minor Traffic Violation?; in 2016, Western North to South Routes: I-5, I-15, I-25 and other paralleling Interstates and Highways, and Human Trafficking; in 2017, Search and Seizure Case Law, and Tactical Errors made During the Traffic Stop and What Smugglers say, but Really Mean; and in 2018, Consensual Encounters Interdiction, and Crime on the Border.

¹² The three primary training providers (NCEA, Triple I, and Desert Snow Training) are private organizations that specialize in drug-interdiction training.

Racial Profiling and Cultural Diversity Training

All thirteen DHET members attended four to five hours of racial profiling training at some point after their hire date. Updated training on the topic was received by eight of the Team members and ranged from four to eight additional hours.

Eleven of the thirteen Team members attended eight hours of cultural diversity training at some point after their hire date. Updated training on the topic was received by eight of the Team members and ranged from four to sixteen additional hours.

Supervisory Training

Both sergeants who supervised the Team completed an 80-hour Basic Supervisors course. However, the records we reviewed did not show whether any training was specific to supervising a drug-interdiction team.

Recommendations

Should the Department seek to reinstate the DHET, the OIG recommends the following:

Recommendation No. 1: It is recommended that before any deputy is assigned to the DHET team, he or she, at minimum, receive training on Drug Trafficker Interdiction, Drug Trafficking Investigations, and Drug Identification Packaging, along with any other specialized highway drug-interdiction training.

Recommendation No. 2: It is recommended that before any supervisor is assigned to supervise the DHET, he or she receive training on Narcotic and Specialized Unit Supervision.

Recommendation No. 3: It is recommended that all DHET supervisors and deputies attend annual training on search-and-seizure law updates and on expert testimony.

Recommendation No. 4: It is recommended that all DHET supervisors and deputies attend biannual training on racial profiling and cultural diversity.

CRITERIA FOR IDENTIFYING AND STOPPING VEHICLES

OIG staff met with Santa Clarita Valley Station management personnel who oversaw and supervised the DHET to ask what criteria were used to determine which vehicles to follow and then pretextually stop. Management stated DHET

deputies use “criminal profiling,”¹³ not racial profiling, to decide. Criminal profiling generally refers to criteria suggesting that a particular violation of the law may be occurring, but which may be insufficient to establish the necessary reasonable suspicion or probable cause to detain a person for investigation. As such, when DHET deputies identify particular “criminal profiling” factors (described below), they then try to develop reasonable suspicion or probable cause that a traffic violation has been committed. The factors that inform the DHET’s criminal profiling include criteria that may not explicitly touch on racial or ethnic identity, but which may unintentionally contribute to a disproportionate number of stops of members of specific racial or ethnic communities. Criminal profiling has been described as “an investigative tool to identify suspects . . . [through] analyzing patterns that help predict future crimes or victims.”¹⁴ It seeks to identify and describe likely suspects by comparing their behavior to known patterns of criminal behavior.

Racial profiling, on the other hand, is generally understood to mean the improper use of race or ethnicity for taking law enforcement action. Specifically, it refers to police-initiated action that relies on the race, ethnicity, or national origin (rather than the behavior) of an individual.¹⁵ California Penal Code section 13519.4(e) defines racial or identity profiling as: “the consideration of, or reliance on, to any degree, actual or perceived race, color, ethnicity, national origin, age, religion, gender identity or expression, sexual orientation, or mental or physical disability in deciding which persons to subject to a stop or in deciding upon the scope or substance of law enforcement activities following a stop, except that an officer may consider or rely on characteristics listed in a specific suspect description. The activities include, but are not limited to, traffic or pedestrian stops, or actions during a stop, such as asking questions, frisks, consensual and nonconsensual searches of a person or any property, seizing any property, removing vehicle occupants during a traffic stop, issuing a citation, and making an arrest.”

The Department does not have a stand-alone policy that prohibits “racial profiling.” However, policy does provide generally that, “[a]s a public law enforcement agency, the Department is committed to ensuring that members of the public receive equal protection of the law without bias based on race, color, ethnicity,

¹³ Very generally, “criminal profiling” is the practice of identifying persons as possibly being engaged in criminal conduct by observing characteristics in those persons’ behaviors that have been observed in known criminals in the course of their criminal conduct. For a more detailed description of criminal profiling, see Lea Winerman, “Criminal Profiling: The Reality Behind the Myth,” *Monitor on Psychology* 35, no. 7 (2004): 66.

¹⁴ Vicky A. Bufano, “Racial Profiling Versus Criminal Profiling: Is There a Difference?,” *In Public Safety*: October 10, 2018, <https://inpublicsafety.com/2018/10/racial-profiling-versus-criminal-profiling-is-there-a-difference/>, accessed on February 21, 2019.

¹⁵ *Ibid.*

national origin, religion, gender, gender identity, disability, or sexual orientation"¹⁶ Additionally, department policy provides that department members shall not use race, color, ethnicity, national origin, religion, gender, gender identity, disability, or sexual orientation as a factor to any degree in establishing reasonable suspicion or probable cause other than when such information is part of a credible description of a specific suspect in a criminal investigation.¹⁷

According to Department management, the criminal profile criteria used by the DHET to carry out a pretextual traffic stop include factors such as: (1) driving an expensive car; (2) driving a car that needs repairs; (3) driving with an out-of-state license plate; (4) driving a rental car; (5) acting too calmly; (6) acting too nervously; and (7) having a car filled with air fresheners. When drivers or occupants are identified based on these factors, deputies then look for traffic violations that will legally justify a stop. Once a vehicle is stopped, the deputies are trained to look for drug-trafficking indicators that include signs of stress or deception by the driver or occupants of the stopped vehicles.

The factors listed above give DHET deputies a great amount of discretion when deciding which motorists to stop, given that they include a broad spectrum of behavior and characteristics that many if not most motorists exhibit while driving. For example, identifying motorists who look either too nervous or too calm involves a subjective assessment that gives a deputy complete discretion to pull over a person for a factor that may mean nothing. Without strict and clear guidance from Department policy and sufficient training against racial profiling and on implicit bias,¹⁸ this discretion could lead DHET deputies to target Latino motorists. This is particularly problematic when dealing with potential crimes that likely originate from a foreign country – like DHET’s mission to address narcotics trafficking originating from Mexico.

In order to gain a better understanding of the actual practices of the DHET, OIG staff participated in ride-alongs with two different deputies. OIG staff’s observations were limited to 16 hours because the team was suspended at the end of November 2018. During those ride-alongs, OIG personnel observed twelve traffic stops.

One deputy explained to staff that in addition to the criminal profiling characteristics mentioned above, he developed a "criminal profile" on possible drug traffickers based on running vehicle license plates, a motorist’s behavior upon

¹⁶ MPP 5-09/520.00, Constitutional Policing and Stops.

¹⁷ MPP 5-09/520.05, Stops, Seizures, and Searches.

¹⁸ Implicit bias refers to the attitudes or stereotypes that affect our understanding, actions, and decisions in an unconscious manner. Training on implicit bias for police officers is spreading nationwide based on the theory that it can positively influence an officer’s behavior on the street when officers acknowledge their biases.

noticing his patrol car, and his personal experience with individuals trafficking drugs on the I-5 corridor. The deputy described starting a typical day by observing vehicles traveling on the I-5. He stated he develops a criminal profile as he passes a vehicle and observes the body language of the driver and any passengers. He then falls behind the vehicle to run the license plate "randomly" for "suspicious" signs such as: is the vehicle a rental car from San Diego or a northern city such as Stockton; is the car title a salvaged title; does the car have new plates on an old car; or was the vehicle recently bought and registered.¹⁹ He also continues to observe the behavior of the occupants of the vehicle.

After developing a suspicion to believe the individual(s) may be involved in drug trafficking based on his observations, the deputy said he follows the vehicle and conducts a traffic stop when he observes a Vehicle Code violation. The deputy reported he thereafter looks for additional indicators of potential drug trafficking such as suspicious behavior that includes people not acting like "normal" commuters. He described normal commuters as drivers making eye contact and driving without making any "suspicious" moves.

The deputy indicated he studied body language and interviewing techniques at training conferences and classes he attended. He also said he does not base his belief that an individual is exhibiting suspicious behavior on just one action or observation, but rather on several different things that when considered together make a vehicle or driver worth looking at closer. "It's like fitting a puzzle," he said. Once he gathers enough information consistent with some type of criminal activity, he will ask the person for consent to search the vehicle.

While OIG staff did not observe verbalized indications of selective or discriminatory enforcement of the law based on race or ethnicity before or during the twelve traffic stops, eleven of the twelve drivers stopped during our ride-alongs (91%) were Latino.

The following are some of the details relating to the twelve traffic stops observed by OIG staff:

¹⁹ It is unclear whether the deputy ran plates randomly or ran the plates of only the motorists or cars about which he was suspicious.

DHET Traffic Stop Ride-Alongs

Traffic Stops	Stated Reason for Stop	Race/Ethnicity	Gender of Occupant(s)	Age	Consent Search	Probable Cause Search	Backseat Detention	Contraband	Arrest/Warning
# 1	Tinted windows Body Language	Hispanic (H)	M	20s	N	N	N	N	Warning
# 2	Lane Straddling Tinted windows Baby not in car seat	H	M/F/ Baby	40s	N	N	N	N	Warning
# 3	Tinted windows Body Language	H	M	20s	Y	N	Y	N	Warning
# 4	Speeding Body Language	H (perceived)	M/F	30s	N	N	N	N	Warning
# 5	No plates, passenger had something in hand, was fidgeting around, threw something into back seat. Driver was hanging onto steering wheel and not making eye contact.	H	M/M	20s/ 30s	N	N	N	N	Warning
# 6	Fifteen air fresheners hanging in plain view in interior of car, 60 mph in the #2 lane, obstructing traffic.	H/H	M/M	20s	Y	N	Y	N	Warning
# 7	Tinted windows Broken brake light Body language	H (perceived)	F/M	30s	Y	N	Y	\$140,000 currency in a backpack	Arrest
# 8	Speeding over 65	H	M	40s	Y	N	Y	Driver had \$2,000 in cash	Warning
# 9	Broken Tail Lights	H	M	39	Y	N	Y	N	Warning
# 10	Tinted Windows	W/W/W	M/M/M	20s	N	N	N	N	Warning
# 11	Tinted Windows	H	M	23	Y	Y	N	Driver had \$9,000 cash in plastic bag, K-9 found no scent of drugs	Warning
# 12	Broken Taillights	H	M	19	N	N	N	N	Warning

Based on OIG staff observations and conversations with deputies, it is possible that DHET deputies may develop a perception of the motorist's race or ethnicity based on their observations of the driver or the registered owner's surname before deciding whether to conduct a traffic stop. However, at the October 25, 2018

meeting of the Civilian Oversight Commission, a Department manager defending the DHET's practices stated, "You don't know what age, ethnicity, gender is in the vehicle until you pull them over and you have contact with them."

Recommendations

Should the Department seek to reactivate the DHET, the OIG offers the following recommendations:

Recommendation No. 5: It is recommended that a written policy or unit order be implemented for the DHET and/or any other specialized station unit that sets forth the goals and expectations of the team, as well as specific guidance on how to develop legally-sound probable cause for pretextual traffic stops and any resulting detentions.

Recommendation No. 6: It is recommended that the Department have a stand-alone policy that clearly prohibits racial profiling.

VIDEO CAMERAS

According to Santa Clarita Valley Station management, LA CLEAR provided the DHET with body-worn cameras in 2012, but because the cameras were of poor quality, they soon broke down and no efforts were made to repair them.

July 2015

The DHET did not use video cameras again until the City of Santa Clarita purchased four in-car video systems for the DHET team in July 2015. OIG staff reviewed purchasing records confirming four in-car video systems were purchased by the City of Santa Clarita and installed in four patrol vehicles assigned to the DHET on July 16, 2015. The cost of the video systems totaled \$27,534. Video recordings reviewed by OIG staff further confirmed the DHET began using the in-car video systems on the date they were installed.

The Department's receipt of the video systems from LA CLEAR and the City of Santa Clarita does not appear to have been authorized by the Board of Supervisors. California Government Code section 25355 permits the County to accept grants, donations, or gifts for a specific purpose, but County Fiscal Manual Section 2.4.2, Donation Reporting Requirements, requires that any donation that exceeds \$10,000 be placed on the agenda for the Board's consideration and acceptance. Additionally, the Board requires each department to file a quarterly report with the Executive Officer-Clerk of the Board of Supervisors listing all gifts received, regardless of the amount. Neither the Department's liaison to the Board of Supervisors nor the Department's Administrative Services Division, Financial Programs Bureau

managers were able to locate any documentation related to the video cameras provided by LA CLEAR or the in-car video systems purchased by the City of Santa Clarita. The Department's liaison to the Board of Supervisors confirmed the in-car video systems from the City of Santa Clarita were not processed through the Board of Supervisors. The video systems therefore may not have been properly received and documented by the Department.

August 2018

Although the DHET was using in-car video systems since July 2015 (and body-worn cameras for some period of time since 2012), neither the Department nor the Santa Clarita Valley Station had any policies or procedures regarding the use of such equipment and video recordings. In August 2018, OIG staff asked about the DHET's policy on the in-car video systems and body-worn cameras. On August 22, 2018, Santa Clarita Valley Station management implemented Unit Order No. 30.20-18, Watch Guard In-Car Video System. The unit order set forth guidelines for record keeping, maintenance, activation, retention of video, booking of video, and video review.

September 2018

The above-described unit order was rescinded September 18, 2018, by the then-Assistant Sheriff over Patrol Operations. Shortly thereafter, management staff advised OIG that they stopped activating the in-car video systems on September 24, 2018, but the video systems remained installed in the four vehicles assigned to the DHET. Thereafter, management required that in order to work, DHET deputies had to personally purchase and use body-worn cameras during their traffic stops.

With respect to the unit order governing the in-car video, MPP 3-09/340.00, Department Information, requires all unit orders be vetted through a series of units, including Risk Management Bureau and Field Operations Support Services, to ensure they are consistent with department-wide policies. There is no indication that the unit order implemented in August and rescinded in September was vetted as required. According to management staff at Santa Clarita Valley Station, the decision to rescind the unit order and stop using the in-car video systems was made because of the Department's pending review and development of a department-wide personal video and body-worn camera policy.

California Government Code section 34090.6 requires that routine video monitoring, including in-car video systems, be retained by law enforcement agencies for one year. Notwithstanding the lack of policy on the topic, OIG staff viewed video recordings of the DHET's traffic stops that did not lead to arrests and

confirmed the DHET was complying with this statute. Management reported that the DHET retained video recordings that led to arrests indefinitely.

November 2018

The DHET was suspended on November 16, 2018. It is unknown if the deputies who purchased personal body-worn cameras are using them in their current assignments.²⁰

Recommendations

Based on OIG's review of the DHET's procurement of and use of video and body-worn cameras, the OIG recommends the following:

Recommendation No. 7: It is recommended that the Department ensure all unit orders are properly vetted in accordance with MPP Section 3-09/340.00, Department Information.

Recommendation No. 8: It is recommended that the Department ensure adherence to California Government Code section 25355 and County Fiscal Manual Section 2.4.2, Donation Reporting Requirements, when receiving donations.

Recommendation No. 9: It is recommended that station management work with the Department's Administrative Services Division to ensure that the in-car video system purchased by the City of Santa Clarita in 2015 for DHET's use is properly accounted for.

Recommendation No. 10: It is recommended that the Department issue department-wide policy and training on the use, retention, and proper reporting of audio-video recordings when capturing any public contact on an in-car video, body-worn camera, and/or audio recording system before requiring or allowing deputies to use such devices in the course of their duties.

DATA ANALYSIS

On December 10, 2018, the CHP provided the Department and the OIG with data on all citations its officers issued for the period of April 1 through September 30, 2018, in the I-5 corridor. In providing this information, the CHP indicated that

²⁰ The Department allows deputies to use personal body-worn cameras while on duty. However, no policy or guidelines are provided on their use. Hence, deputies have complete discretion about when to use the cameras and are not provided with any guidance on how long to retain the video footage, whether they must document its existence in reports, or when they are required to turn over the video footage to management or others.

currently, it does not have the technology to be able to extract from its database information for all stops on a particular stretch of freeway. However, it was able to manually compile all the citations issued (as opposed to stops during which drivers were not cited) for the six-month period on the same stretch of freeway where the DHET conducted its stops. OIG staff verified the data provided by the CHP to ensure its accuracy and found the racial and ethnic composition of persons issued citations on the 40-mile section of the I-5 corridor that the DHET patrols was similar to the data provided by the CHP for the entire Newhall area. What follows is a racial/ethnic breakdown comparison of the overall stops by the DHET with the citations issued by the CHP for the same six-month period. Additionally, OIG staff analyzed several additional data points relating to the stops performed by the DHET, as detailed below.

Overall Stops

The DHET conducted a total of 976 traffic stops involving 1,015 vehicle occupants during the April through September 2018 time period;²¹ sixty-eight percent of the persons contacted were Latino. In comparison, the CHP issued 2,454²² citations during the same period of time, and 43% of those citations were issued to Latino motorists. The following table compares the racial/ethnic composition and percentages of persons stopped and cited by the DHET and CHP:

Comparison of DHET Stops vs. CHP Citations on I-5 Corridor

Race	LASD		CHP	
	Occupants	% of Total	Citations	% of Total
Asian	43	4.24%	209	8.52%
Black	56	5.52%	223	9.09%
Hispanic	689	67.88%	1060	43.19%
Native American	12	1.18%	0	0%
Other	28	2.76%	241	9.82%
Pacific Islander	2	0.20%	4	0.16%
White	185	18.23%	717	29.22%
Grand Total	1015	100.00%	2454	100.00%

²¹ According to data provided by the Department on December 24, 2018.

²² A total of 38 citations were excluded because the motorist's race/ethnicity was not noted on the citation.

Consent Searches

Following a DHET traffic stop, Hispanics (Latinos) had the highest probability of being subjected to a consent search of their vehicle by a DHET deputy. Approximately 32% (322 out of 1,015 contacts) of all motorists stopped by the DHET resulted in a consent search of a vehicle. Of the 322 consent searches, almost 82% of the searches were performed on vehicles driven by a Hispanic/Latino driver – this is over seven times greater than searches of vehicles driven by White drivers. The breakdown of these consent searches by race/ethnicity follows:

Consent Searches

Race	# of Searches	% of Total
Hispanic	263	81.68%
White	35	10.87%
Asian	9	2.80%
Black	8	2.48%
Other	4	1.24%
Native American	3	0.93%
Grand Total	322	100.00%

DHET deputies recovered contraband in 6.2% (20 out of 322) of the vehicles searched pursuant to a consent search.²³ The remaining 93.8% (302 out of 322) of the consent searches resulted in no seizure. Of the 302 consent searches resulting in no seizure, 292 of them resulted in the motorist receiving a warning without a citation or arrest, and Hispanics/Latinos comprised the largest percentage of those receiving a warning, as shown in the following table:

Contacts Involving Consent Searches with Warning Given

Race	# of Warnings	% of Total
Hispanic	238	81.51%
White	31	10.62%
Asian	9	3.08%
Black	8	2.74%
Native American	3	1.03%
Other	3	1.03%
Grand Total	292	100.00%

²³ Each of these twenty stops resulted in an arrest.

The foregoing data suggests DHET deputies may have been asking for consent to search vehicles without having adequate reasonable suspicion that the motorist possessed contraband. If they did have satisfactory reasonable suspicion, we would expect the rate of seizures per consent searches to be greater than what the data shows. Although Department policy states that consent searches must be reasonable, there is no policy requiring deputies to articulate in the narrative portion of their daily log the reasons for requesting a consent to search. In cases in which the motorist simply receives a warning, a report that might contain that information is not generated. Currently, the requirement to articulate the reason for seeking consent to search is applicable only to the Antelope Valley stations of Palmdale and Lancaster because of the court-enforceable settlement agreement with the U.S. Department of Justice (DOJ) discussed in the "DOJ Antelope Valley" section of this report.²⁴ In addition, both stations have adopted station unit orders²⁵ requiring deputies to articulate in their patrol mobile digital computer (MDC) system's narrative section the reasons for seeking consent to search.²⁶ Despite these unit orders, in recent Department audits of the Palmdale and Lancaster stations, deputies were found to be 0% and 22% compliant, respectively, in logging the reasons why they requested a consent to search.²⁷

Narcotics Stops

According to the HIDTA, the domestic highway enforcement program's mission is to "promote[] public safety through 21st century criminal interdiction by facilitating information sharing to disrupt the flow of drugs moving domestically between borders and destination communities."²⁸ Similarly, the main mission of the Department's DHET was to disrupt the flow of drugs along the I-5 corridor. Yet, only about 2% (21 out of 1,015) of all persons contacted during the traffic stops reviewed for the six-month period referenced above were logged (or "cleared") as narcotics-related contacts using the deputies' MDC.²⁹ The racial/ethnic breakdown of traffic stops logged as narcotics related is as follows:

²⁴ *United States of America v. County of Los Angeles, et al.* (Case No. 15-CV-03174)

²⁵ Palmdale unit order 14-05 and Lancaster unit order #68. Station unit orders are specific operating procedures issued by the captain of a particular station and are not considered department-wide policy.

²⁶ "MDC system" refers to the in-dash computer system installed in all Department vehicles that is used to log all of a deputy's activities while on duty.

²⁷ LASD AAB audit reports Detention of Individuals and Data Collection Audit - Palmdale. Project No. 2016-2-A and Detentions of Individuals and Data Collection Audit North Patrol Division Lancaster Sheriff's Station, Project No. 2017-14-A.

²⁸ See http://www.nhac.org/National_Initiatives/DHE.html.

²⁹ Narcotics-related stops are defined as all stops that were logged by the deputy with statistical codes 181 and 182. Statistical codes are used to report Part I and Part II crimes

Narcotics-Related Contacts

Race	# of Contacts	% of Total
Hispanic	18	85.71%
Other	1	4.76%
White	2	9.52%
Grand Total	21	100.00%

At first glance, because Hispanics/Latinos account for 86% of all contacts that resulted in narcotics-related clearances, it appears that they possessed narcotics at a higher rate than individuals of other racial or ethnic backgrounds. However, the large percentage of narcotics-related clearances associated with Latinos is a product of the disproportionate number of stops conducted of those drivers. Because overall narcotics-related clearances involving Latinos make up less than 2% of all the stops conducted by the DHET, the DHET's effectiveness in criminally profiling is uncertain at best. The Department did not conduct periodic analyses of its stop data to measure the efficiency and effectiveness of its DHET program other than maintaining a record of its contraband seizures.³⁰

Backseat Detentions

A deputy will detain an individual in the back seat of his or her patrol vehicle during traffic stops or calls for service when the individual could pose a threat or an escape risk while the deputy conducts an investigation. In recent years, the Department has come under scrutiny by the United States DOJ for its backseat detention practices. Individuals in the Lancaster and Palmdale areas complained that backseat detentions were being used without legal authority, resulting in the unlawful detention of people pulled over for minor traffic offenses.

The Fourth Amendment to the U.S. Constitution protects against arbitrary arrests and detentions. For that reason, in 2015 the Department implemented a policy that provides that "[b]ackseat detentions shall not be used except when the deputy has individualized reasonable suspicion that justifies a detention and an articulable

to the FBI as part of its Uniform Crime Reporting (UCR) program. All narcotics-related clearance codes should be between 181 through 189 according to the Department's Statistical Code Guide.

³⁰ Assembly Bill 953, The Racial Profiling Act, enacted in 2015, requires all law enforcement agencies in California with more than 1,000 members to begin collecting stop data as of July 1, 2018. That data is to be released to the California DOJ for public review by April 1, 2019. The Act requires the following information be collected from each stop: the time, date, and location of the stop; the reason for the stop; the citation or warning given; the result of the stop; the offense charged; and the perceived race, ethnicity, gender, and age of the person stopped.

reasonable belief that the detained person may pose a threat Deputies shall not conduct detentions as a matter of course during routine traffic stops[.]”³¹

Out of the 1,015 occupants contacted by the DHET during the April through September 2018 time period, 254 involved backseat detentions. Of those, 88% (224 out of 254) of those occupants were Hispanic/Latino, while only 6% (15 out of 254) of those occupants were White. The racial/ethnic breakdown of all 254 backseat detentions is as follows:

Contacts Involving Backseat Detentions

Race	# of Detentions	% of Total
Hispanic	224	88.19%
White	15	5.91%
Other	5	1.97%
Asian	5	1.97%
Native American	3	1.18%
Black	2	0.79%
Grand Total	254	100%

An analysis of all the stops reveals that DHET deputies may not have properly tracked and documented all of their backseat detentions. After each backseat detention involving a vehicle, pedestrian, or bicycle stop, a deputy is required to code the stop in his or her MDC system as a “B-Backseat Detention.”³² Additionally, Department policy requires that all backseat detentions have an articulated factual justification in the narrative portion of a deputy’s log.

A review of the 1,015 contacts revealed that all but eighteen of the contacts were coded with the “D-Detainee Driver” code, but none were coded with the “B-Backseat Detention” code required to properly track these different types of detentions. The 254 detentions listed above reflect those cases in which deputies recorded the length of time (in minutes) of the backseat detention. Although the remaining 761 contacts did not include documentation of a backseat detention, it is possible that more backseat detentions may have occurred. For example, 166 of the 761 contacts involved a consent search of the vehicle but no backseat detention. Based on OIG staff’s observations during our ride-alongs and our review of video footage for traffic stops conducted by the DHET, all but one of the consent

³¹ MPP Section 5-09/520.10, Backseat Detentions.

³² Requirements for logging field activity and codes were outlined in the Department’s December 14, 2016, Field Operations Support Services Newsletter Volume 13, Number 12.

searches involved a motorist being placed in the backseat of the patrol car during the search.

Additionally, a review of the narratives in the Team's reports indicates deputies did not articulate their justification for placing motorists in the back seat of their patrol cars as required by policy. OIG staff reviewed the narratives of 26 of the 254 contacts with a backseat detention and not a single one articulated the reasons for the backseat detention. This is consistent with the DOJ's findings in the Antelope Valley where it was alleged that deputies "routinely fail[ed] to articulate facts sufficient to support the predicate of reasonable suspicions required for a detention consistent with the Fourth Amendment." While we cannot conclude that DHET deputies did not have sufficient reasonable suspicion to support a backseat detention, it is clear they were not complying with Department policy requiring them to articulate their reasons for such detentions.

Total Detention Time

Before a DHET deputy pulls over a motorist for a traffic violation, the deputy looks for a valid reason that will justify a stop of the vehicle. Violations include minor infractions such as tinted windows, broken taillights, or speeding. After the stop, a DHET deputy will question the motorist to try to develop reasonable suspicion that a crime (other than the traffic violation) was committed to enable the deputy to ask for consent to search or to develop probable cause to believe a crime was committed that would establish independent grounds to search without consent. The longer a stop is prolonged without developing reasonable suspicion, the closer it becomes an unreasonable seizure prohibited by the Fourth Amendment.

OIG staff analyzed 437 DHET contacts to determine the total amount of time deputies spent with motorists during their stops by calculating the number of minutes from the beginning of the stop to the end of the stop.³³ There is no clear definition of what constitutes an unreasonably prolonged detention because courts look at the totality of the circumstances on a case-by-case basis. Nevertheless, what follows is an analysis of the stops that lasted ten minutes or more and resulted in no citation or arrest, only a warning. The following chart shows those stops broken down by race and ethnicity:

³³ As measured by the difference in time between code 10/97 (start of the stop) and code 10-98 (end of the stop) that the deputy entered in his or her MDC terminal.

Contacts of 10 Minutes or More in Duration with Warning

Race	# of Contacts	% of Total
Hispanic	324	74.14%
White	60	13.73%
Asian	19	4.35%
Other	14	3.20%
Black	14	3.20%
Native American	6	1.37%
Grand Total	437	100%

Hispanics/Latinos comprised 74% of the contacts lasting at least ten minutes. Moreover, of the 324 contacts of Latinos, 79 lasted more than one hour (and one lasted four hours and nineteen minutes). An equal number of contacts lasted between thirty and sixty minutes and over 50% of the contacts lasted between ten and twenty-nine minutes, as presented by the following chart:

Contacts of Hispanics Lasting 10 Minutes or More with Warning

Elapsed Time of Stops	# of Contacts	% of Total
More than 60 min.	79	24%
Between 30 min. and 60 min.	79	24%
Between 10 min. and 29 min.	166	51%
Grand Total	324	100%

Based on the above, the duration of the DHET's stops of Latinos resulting only in warnings are significantly greater than the duration of the stops for any other race or ethnicity.

Arrests and Seizures of Drugs

OIG staff reviewed the DHET's arrests and seizures for the period under observation and determined there were a total of thirty-nine arrests for charges such as narcotics possession and distribution, kidnapping, money laundering, outstanding warrants, stolen vehicles, and others. Of the thirty-nine arrests, thirty-six³⁴ (92.3%) occurred on the I-5 corridor. Of those thirty-six arrests, thirty-three (91.6%) were Hispanics, as presented in the following table:

³⁴ There were a total of 26 traffic stops that generated these thirty-six arrests.

DHET Arrests on the I-5 Corridor

Race	# of Arrest	% of Total
Hispanic	33	91.67%
White	2	5.56%
Asian	1	2.78%
Grand Total	36	100.0%

Seizures made by DHET during the relevant period included 320 pounds of a variety of drugs, 10,585 Oxycodone pills, \$103,090 in currency, and five handguns, as shown in the following table:

DHET Seizures

Type of Seizure	Amount	Units
Marijuana	49	Pounds
Hashish	2	Pounds
Cocaine	53	Pounds
Heroin	67	Pounds
Methamphetamine	149	Pounds
Oxycodone	10,585	Pills
Currency	103,090	Dollars
Weapons	5	Handguns

Legal Analysis of the Data

The Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution prohibits selective or discriminatory enforcement of the law based on race. *Whren v. U.S.* (1996) 517 U.S. 806,813 (1996). Discriminatory policing may arise from an explicit classification, or from a facially neutral policy or practice implemented or administered with discriminatory intent. *See United States v. Armstrong* (1996) 517 U.S. 456, 457; and *Washington v. Davis* (1976) 426 U.S. 229, 239-41.

To assess discriminatory intent, courts consider both direct and circumstantial evidence. *Village of Arlington Heights v. Metro. Hous. Dev. Corp.* (1977) 429 U.S. 252, 265-66. Intent can also be established when the effect of police action leads to the existence of a "clear pattern, unexplainable on grounds other than race." *Id.* at 266. In some cases, "proof of discriminatory impact 'may for all practical purposes demonstrate unconstitutionality because in various circumstances the discrimination is very difficult to explain on nonracial grounds.'" *Miller-El v. Cockrell* (2003) 537 U.S. 322, 345, quoting *Batson v. Kentucky* (1986) 476 U.S. 79, 93. Law

enforcement activity may even violate the Equal Protection Clause when discriminatory intent was only a contributing factor motivating the action or decision. In other words, it need not be shown that "the challenged action rested *solely* on racially discriminatory purposes." *Arlington Heights, supra*, at p. 265 (emphasis added); see also *Wayte v. United States* (1985) 470 U.S. 598, 610.

Given the data reviewed by the OIG, it appears that the DHET's activities may have disproportionately impacted Latino motorists. Latinos were both stopped and searched at much greater rates than other racial or ethnic groups, and yet, there was a very low rate of success in finding contraband (less than two percent). The impact on Latino motorists from the DHET's practices is hard to explain on non-racial/ethnic grounds. In fact, there has been no explanation given by Department officials why such high percentages of the stops and searches were of Latino drivers.

Recommendations

Based on the OIG's analysis, the OIG recommends the following:

Recommendation No. 11: It is recommended that the Department develop a department-wide policy requiring deputies to articulate the reasons for seeking a consent search as is already required by the Palmdale and Lancaster stations and the DOJ court-enforceable settlement agreement.

Recommendation No. 12: It is recommended that the Department issue department-wide guidelines and training specifically related to the risks associated with unnecessary over-detentions of stopped motorists.

Recommendation No. 13: It is recommended that if the DHET is reinstated, all Team members limit the length of a traffic stop to a reasonable amount of time necessary to accomplish the purpose of the stop, unless separate and additional articulable suspicion to believe a crime was committed is developed during the stop.

Recommendation No. 14: It is recommended that if the DHET is reinstated, Team members be required to document the length of time spent on consent searches that do not result in an arrest and supervisors be required to conduct periodic audits of any audio/video of the stop/search to ensure searches are within the scope of the consent and are not unreasonably prolonged.

Recommendation No. 15: It is recommended that if the DHET is reinstated, the Team supervisors develop periodic audits and analyses of its stop data or other metrics that would enable the Department to measure the efficiency and effectiveness of the unit.

Recommendation No. 16: It is recommended that if the DHET is reinstated, the Audits and Accountability Bureau conduct periodic audits of the DHET's backseat detention practices similar to the audits conducted on the Palmdale and Lancaster stations in Project No. 2016-2A and Project No. 2017-14-A.

Recommendation No. 17: It is recommended that if the DHET is reinstated, supervisors regularly coordinate the review and analysis of stop data to determine if any racial or ethnic group is being disproportionately impacted by the DHET's procedures. In conducting such analysis, supervisors should be guided by the methods set forth in the DOJ court-enforceable settlement agreement.

CRIMINAL PROSECUTIONS

Starting in July 2014, the DHET began presenting cases to the United States Attorney's Office (USAO) for federal prosecution. Between July and September 2017, thirty-six cases were filed by the USAO. Roughly one-third of the cases filed by the USAO were eventually dismissed by the federal court on constitutional or credibility grounds. OIG staff were advised by several Department executives that a meeting occurred with personnel from the USAO regarding the DHET. Following the meeting, the Department did not present any additional DHET cases for federal filing. OIG requests to schedule meetings with Department personnel to discuss the reasons why cases were no longer presented for federal filing after September 2017 were not granted, perhaps in part due to the retirement of some of the executives who likely attended the meeting. After September 2017, DHET cases were presented only to the Los Angeles County District Attorney's Office (LADA) for filing consideration.

As early as 2014, the Department was made aware by the UASO of the credibility concerns regarding a deputy assigned to the DHET team. Despite those concerns, the Department allowed the deputy to stay on the Team and no analysis of the Team's cases and dispositions was conducted to determine if there were any systemic issues with the way the Team conducted its stops, secured consents to search, or documented evidence. It was not until November 2018 that the DHET was suspended, which occurred after public concerns were expressed regarding the DHET's activities.

The significance of the federal cases is twofold. First, members of the DHET were found to have violated motorists' constitutional rights. Second, the Department ignored red flags about the DHET's practices and one of the team member's credibility. Had the Department monitored the case dispositions after they were presented to the USAO, it would have seen that problems were present.

Law on Pretextual Traffic Stops

It is critical that law enforcement agencies act in a constitutional manner to ensure, at minimum, that the community has confidence in the agencies empowered to enforce the law. To that end, the Department has policies in place requiring its personnel to act in accordance with the Constitution. Yet, as referenced above, in numerous federal cases involving DHET investigations, the courts found the detentions and searches of the Team violated the Constitution.

Under the Fourth Amendment, which prohibits unreasonable searches and seizures, law enforcement officers are permitted to conduct pretextual traffic stops. An officer's motive for a traffic stop is irrelevant under the Fourth Amendment if there is a legal basis for the initial stop. *Whren v. United States*, *supra*. 517 U.S. at p. 819; *see also United States v Wallace* (9th Cir. 2000) 213 F3d 1216, 1219. An officer's state of mind generally does not invalidate a search or detention if the circumstances, when viewed objectively, justify the action under the Fourth Amendment. However, under the Equal Protection Clause of the Fourteenth Amendment, officers cannot "selective[ly] enforce[] . . . the law based on considerations such as race." *Whren, supra*, at p. 813. Thus, as discussed above, a pretextual stop may be legal under the Fourth Amendment, yet illegal under the Fourteenth Amendment if race or other protected characteristic is used as a factor in determining whether to make the stop.

When conducting a stop for a traffic violation, the officer must address the underlying violation and cannot prolong the detention beyond that required to address the violation without "independent reasonable suspicion" to justify the delay. *Rodriguez v. United States* (2015) 135 S. Ct. 1609, 1615-1616. In *Rodriguez*, the U.S. Supreme Court held that officers may not extend the length of a traffic stop to conduct an investigation unrelated to the original mission of the stop unless the investigation/extension of the traffic stop is independently justified by reasonable suspicion. (*Ibid.*) A "reasonable suspicion exists when an officer is aware of specific, articulable facts which, when considered with objective and reasonable inferences, form a basis for particularized suspicion." *United States v. Montenegro-Camargo* (9th Cir. 2000) 208 F.3d 1122, 1129 (citations omitted).

Thus, a law enforcement officer intending to investigate another possible crime may stop a driver for a traffic violation, but the officer cannot prolong the detention without reasonable suspicion of that other crime. The following are some examples of DHET-investigated federal criminal cases in which the court found DHET's practice of prolonging detentions to obtain a consent to search unconstitutional.

DHET Cases in Federal Court

As previously mentioned, the DHET presented thirty-six cases to the USAO for prosecution in federal court. Those cases resulted from arrests that occurred between 2012 and 2017. Out of those cases, the federal prosecutor secured sixteen convictions. (One of those cases involves a second defendant whose case was still pending a hearing on a motion to suppress the evidence.)³⁵ Five of the cases were cash-only forfeiture proceedings and three of the cases are still pending in federal court. Of the thirty-six cases, eleven were dismissed. Six of the eleven cases were dismissed on a motion by the USAO both pre- and post-indictment and the remaining five cases were dismissed by the court after defense motions to suppress evidence were granted.

The OIG's review of all the dismissals indicates the eleven cases were dismissed either because of concerns about the credibility of one of the DHET deputies or because the seizure of contraband by the DHET violated the Fourth Amendment.

Four of the cases dismissed on motions by the USAO were dismissed because of concerns about a deputy's credibility that arose from a perjury claim regarding the deputy's declaration about his Spanish-language communications with the defendant. The assigned Assistant United States Attorney (AUSA) also stated she had concerns about that deputy's two internal discipline cases. A review of the public records available for the other two cases dismissed by the AUSA failed to disclose why those cases were dismissed, but they involved a different DHET member.

The following is a short discussion of each of the five cases dismissed by federal judges and is based on OIG's review of public records, police reports, audio and/or video recordings of the stops, and transcripts of the hearings.

Federal Case One³⁶

On May 5, 2016, a DHET deputy conducted a traffic stop of a Latino driver based on Vehicle Code violations. The stop was video recorded on a dash camera. Once the car stopped, the deputy approached and asked the driver for his driver's license. The driver responded that he had a temporary driver's license. Approximately five minutes elapsed as the deputy searched a law enforcement database on the MDC in his patrol car to verify the driver's license. When the deputy returned to the car, he told the driver his driver's license was expired and started asking him questions unrelated to the traffic stop or his driver's

³⁵ As of November 19, 2018.

³⁶ *United States v. John Doe 1*, Case No. 16-CR-00436.

license. That line of questioning resulted in a consent to search approximately six minutes after the stop.

The trial court hearing the motion to suppress found that the questions posed to the driver were unreasonable and unrelated to the reasons for the stop. Because the questions prolonged the detention that led to the consent search, the consent to search was deemed invalid. Ten pounds of methamphetamine seized during the search were suppressed and the case was dismissed.

Federal Case Two³⁷

On October 11, 2016, a DHET member conducted a traffic stop of a Latino driver based on Vehicle Code violations. The stop resulted in a consent search and the discovery of narcotics. At the hearing on the motion to suppress the evidence, the AUSA opted not to call the arresting deputy about whom they had previously disclosed to the defense information relating to inconsistent statements the deputy had made about one of his prior traffic stops. Instead, the AUSA relied on the dash camera video to establish the justification for the stop. In reaching its decision to suppress the evidence, the court noted that the deputy had been investigated by several entities for lying to federal prosecutors about obtaining consent to search a vehicle. While the court acknowledged none of the investigations had determined the deputy had lied, the fact that three of the deputy's cases had been dismissed for his conduct during traffic stops was sufficient for the court to hold that the video was an inadequate basis for the stop. The court granted the motion to suppress and the case was dismissed.

Federal Case Three³⁸

On March 2, 2017, a DHET member conducted a traffic stop of a Latino driver based on several Vehicle Code violations. At the hearing on the motion to suppress, the prosecutor again decided not to call the arresting deputy and relied instead on the dash camera video to justify the stop. The court used the same analysis the court used in Case Two above to grant the motion and dismiss the case.

³⁷ United States v. John Doe 2, Case No. 16-CR-00833

³⁸ United States v. John Doe 3, Case No. 17-CR-00181

Federal Case Four³⁹

On December 6, 2016, two DHET deputies conducted a traffic stop of a Latino driver for speeding, an improper lane change, and driving dangerously slow. Once the vehicle was stopped, one of the deputies asked for the driver's license, registration, and proof of insurance. The deputy also asked if the driver was okay and who owned the car. The stop and the duration of these questions were deemed reasonable. However, the driver was thereafter asked to exit the vehicle. Once outside, the driver was asked about his employment and whether there was contraband in the car. The court held these additional areas of inquiry were not reasonably necessary to carry out the mission of the traffic stop and therefore not permitted. Moreover, because the deputy did not testify, the court held the video evidence was insufficient to establish a reasonable suspicion of other unlawful activity to justify the extension of the stop.

In making its ruling, the court reasoned that the deputy:

improperly prolonged the traffic stop in a manner that violated the defendant's rights under the Fourth Amendment. Consequently, the defendant's consent to the search, which occurred after the period of reasonable detention had ended, is without force or effect.

Additionally, the court noted that certain other evidence about the deputy's reasonable suspicion of illegal conduct beyond the traffic violations warranted little weight given the deputy's credibility issues that had arisen in other cases resulting in dismissals.

Federal Case Five⁴⁰

On January 26, 2017, a DHET deputy conducted a traffic stop of a Latino driver for speeding and tinted windows. Upon approaching the driver's window, the deputy reported he smelled a strong odor of air freshener. The driver did not have a driver's license and was asked to exit the vehicle. Four minutes into the stop, and after asking the driver whether he had any contraband in his vehicle and patting him down for weapons, the deputy asked for and received consent to search the vehicle. In granting the motion to suppress evidence, and then dismissing the case, the court held that, "The questioning, the frisk,

³⁹ United States v. John Doe 4, Case No. 17-CR-00006

⁴⁰ United States v. John Doe 5, Case No. 17-CR-00091

the request to search unnecessarily extended the traffic stop without independent reasonable suspicion” and “extending the stop to gain consent [was] not justified by the mission of the traffic stop.” Although the driver did not have a driver’s license and drug traffickers sometimes use air fresheners to hide the smell of narcotics, the court felt the evidence was insufficient to support a reasonable suspicion that a crime had been committed. The court further commented that, “A policy of the police to create a department to make traffic stops only to seek consent or probable cause is troubling.”

DHET Cases in State Court

In addition to reviewing the dismissed federal cases discussed above, OIG staff also reviewed cases presented to the LADA for filing consideration to assess whether those cases also presented any concerns related to the DHET’s procedures or effectiveness.

From October 1, 2017, through September 30, 2018, the DHET conducted seventy-two traffic stops leading to the arrests of eighty-eight individuals, including passengers. Forty-two of those seventy-two (58.3%) traffic stops resulted in criminal case filings in state court. Unlike the situation in federal court where approximately one-third of the cases were dismissed, the state court cases filed during the one-year period reviewed yielded significantly different results. As of November 30, 2018, none of the forty-two cases had been dismissed. However, none of the cases had yet been tried before a jury: twenty were still pending in court and twenty-two had been processed as no contest or guilty pleas to either felony or misdemeanor charges.⁴¹ None of cases had motions to suppress or to dismiss filed.

In analyzing the traffic stop data for the seventy-two traffic stops leading to the arrests of eighty-eight individuals, OIG staff noted several patterns, as discussed more fully below. From a demographic standpoint, seventy-five (85.2%) of the individuals arrested were identified as “Hispanic” or had a Latino surname, eight (9.1%) were identified as “White,” three (3.4%) were identified as “Asian,” and the remaining two (2.3%) were identified as “Black” or “Other.”

⁴¹ With respect to the thirty arrests that were either rejected for prosecution or not presented to LADA for filing, half involved the seizure of large sums of money in hidden compartments within a vehicle. The prosecutor did not file those cases either because there was insufficient evidence to prove the driver of the vehicle knew about the money or the money could not be connected to narcotics trafficking. The other half of the cases were rejected for a variety of reasons, including requests for further investigation, testing, or failure to produce audio or video evidence.

Patterns and Similarities

OIG staff reviewed the arrest reports as well as the audio and video evidence, when available, for twenty-four (1/3) of the seventy-two traffic stops and identified a number of patterns and similarities.

In twenty-three of the cases, the initial reason for the stop was a minor violation of the Vehicle Code such as speeding, an equipment violation, or tinted windows. Twenty-one of the stops (87.5%) were audio and/or video recorded.⁴² Although in six (25%) of the cases the deputy appeared to have independent grounds to search the vehicle based on the suspected smell of narcotics or the driver was unlicensed, the arrest reports noted the deputy nevertheless received *verbal* consent to search the vehicle in all but one case. While in the initial 2012 White Paper the then-captain of the Santa Clarita Valley Station proposed that both verbal and written consent to search would be obtained if at all possible,⁴³ there was no evidence that written consent was obtained or sought in any of the stops OIG reviewed.

The deputy in every videotaped stop involving a traffic violation approached the passenger side of the vehicle and spoke with the occupants through the open window. Shortly thereafter, the drivers of the vehicles were asked to exit the vehicle and asked questions about the ownership of the vehicle, where they were going, where they were coming from, and whether they had any drugs, guns, or large amounts of money in the vehicle. The deputy then asked for consent to search the vehicle and detained the driver and any passengers in the back seat of the patrol vehicle while the search was conducted. Most individuals were patted down for weapons either before or after they were asked for consent to search their vehicle.

Aside from the initial White Paper advocating for the creation of a permanent DHET, the OIG was provided with no written unit orders or policies providing the Team members with guidance on how traffic stops should be conducted or documented. Consequently, deputies frequently left out material information in their reports. The arrest reports, for instance, often did not mention that a pat-down search for weapons was conducted and failed to articulate the reasons for pat-down searches when they were mentioned in the arrest reports. Under *Terry v. Ohio* (1968) 392

⁴² Only three of the twenty-four stops reviewed did not have audio or video evidence. In one case, the DHET deputy used a patrol vehicle that was not equipped with a dash camera at the time. The other two cases occurred in September 2018, after the unit had stopped using or activating the dash cameras upon instructions by the Captain of the Santa Clarita Valley Station and/or the Chief of North Patrol Division. In three of the twenty-one cases with audio and/or video, the deputies' conversations with the occupants of the vehicles were not recorded.

⁴³ White Paper at p. 13.

U.S. 1, peace officers are permitted to pat down individuals for weapons only if they have an articulable suspicion that a crime was committed *and* reasonable grounds to believe the person is armed and dangerous. Nervousness, suspicion of drug use, or a conclusory statement about officer safety does not provide the reasonable suspicion necessary to conduct a pat down for weapons. *See, e.g., United States v. Hernandez* (9th Cir. 2012) 489 Fed. Appx. 157, 159, citing *Moreno v. Baca* (9th Cir. 2005) 431 F.3d 633, 642, and *Ramirez v. City of Buena Park* (9th Cir. 2009) 560 F.3d 1012, 1022. Furthermore, none of the arrest reports provided a timeline from which it could be ascertained whether the initial detention before the consent to search was prolonged. Hence, unless the attorneys representing those arrested were advised of and provided the existing audio and/or video evidence, they were left with having to provide advice based only on the contents of the reports and their clients' statements.

Audio and Video Recordings

Although the traffic stops were almost always audio and/or video recorded, the arrest reports often failed to mention there was audio or video evidence of the traffic stop. In only six (28.6%) of the twenty-one stops with audio and/or video recordings that OIG reviewed did the arresting deputy document in the arrest report that such evidence existed.

The following are some examples of stops in which a review of the audio and video disclosed additional information that likely would be material to the defense in the criminal cases, especially given what occurred in the federal cases discussed above.

State Case One

In January 2018, a DHET deputy reported he conducted a traffic stop of a sedan for travelling seven miles above the speed limit on the I-5 and for having a burned-out center brake light. The report notes the driver said he lived in Stockton but possessed only a Mexican driver's license. The report further notes the driver was extremely nervous and his hand was trembling. Given his nervous behavior, the deputy asked the driver to exit the vehicle and then asked if there were guns, drugs, or money in the car. The report also notes the deputy asked the driver for permission to be patted down for weapons and have his car searched. The driver agreed and was detained in the back seat of the patrol car while the search was conducted. During the search, the deputy found a gym bag with bundles of money totaling about \$50,000. A dog-handling detective responded, and his dog alerted to the odor of narcotics from the money, but no narcotics were located in the vehicle.

The report notes the traffic stop was audio and video recorded. However, a review of the video shows the deputy failed to turn on the microphone during most of his interaction with the driver. Hence, neither the consent to search nor the consent to be patted down was audio recorded.

Additionally, the video shows the deputy did not turn on his microphone until after the money was located and he returned to his patrol car to ask the driver questions about the money. It is unclear from the video at exactly what point the deputy discovered the gym bag with the money, but at about 1½ minutes after the stop, the driver was directed to get out of the vehicle. He was patted down for weapons about three minutes after the stop, and within seconds of the pat down search, the deputy secured the driver in the back seat of the patrol car and then started to search the vehicle. The deputy appeared to be texting and calling someone about three minutes into the search and then continued to search and/or wait for a K-9 unit to arrive. The K-9 unit did not arrive until about 29 minutes after the stop and, a couple of minutes later, the dog entered the vehicle. The video does not capture what occurred in the vehicle, including the dog's "alerting" to the money.

The deputy then got the driver out of the back seat of the patrol car and turned on his microphone so that their conversation was audio recorded. The deputy confronted the driver about the money being associated with drugs and asked him a series of questions. The driver said the money was his to buy a tractor and showed the deputy the name of the company he worked for on his shirt. The deputy continued to question the driver until he said he would prefer to speak with a lawyer, at which point the deputy handcuffed the driver. Although the driver was under arrest and had stated he would prefer to speak with a lawyer, the deputy continued to question him about the money, items in the trunk, and whether there were secret compartments in the vehicle without reading him his *Miranda* rights.⁴⁴

The Deputy District Attorney who reviewed this case for filing requested additional investigation be conducted and the referenced audio and video be submitted. However, after waiting more than two months for the information, the case was declined because the Department did not follow up with the requested information.

⁴⁴ *Miranda v. Arizona* (1966) 384 U.S. 436, and its progeny require that before a person in custody is interrogated, he or she must be informed he has the right to remain silent, among other rights.

State Case Two

In March 2018, a DHET deputy reported he conducted a traffic stop of a sedan with tinted front windows that could possibly obstruct the view of the driver. His report indicated he smelled a strong odor of air freshener upon approaching the passenger side of the vehicle. The deputy asked for the driver's license and asked who owned the vehicle. According to the report, the driver's hand was shaking as he provided his license, the driver said his friend owned the car, but could not provide his friend's last name, and the car's insurance was in a third person's name. The deputy asked the driver if he had been arrested before and whether the car was stolen. The driver responded that the car was not stolen but admitted to having been arrested before for grand theft auto. At that point, the deputy asked him to step out of the vehicle. Once out of the vehicle, the deputy continued to ask him questions about whether there was anything illegal in the vehicle and then asked if he could search the vehicle. The report notes the driver nodded in the affirmative and then walked away from the car and did not protest the search of the vehicle. During the search, the deputy located four packages of heroin concealed under a seat cushion. The driver denied knowing about the heroin.

The report neglects to note that the entire interaction with the driver and the search was audio and video recorded. A review of the recording confirms the vehicle had tinted windows and the driver nodded in response to the deputy asking him if he could search the vehicle. However, the video also provides the following additional and material information: First, the deputy had the driver get out of the vehicle and asked for consent to search a little less than two minutes after he approached the driver. Second, the deputy asked the driver to get in the back seat of the patrol car and assured him the search would be "pretty fast." Third, the deputy appeared to run the vehicle's license plate on his MDC and continued to question the driver while he was in the back seat of the patrol car. Fourth, the deputy started searching the vehicle about six and one-half minutes after the initial approach of the vehicle and searched for between eight to ten minutes before he located four clear bags containing what look like dark plastic cylinders he believed might contain narcotics. About twenty-two minutes after the initial approach of the driver, the deputy advised him that he would let him go if he could confirm there are no drugs in the containers. The video ends a couple of minutes later without showing

the containers being opened to determine whether any narcotics were inside.

The Deputy District Attorney who reviewed this case for filing requested additional information. After waiting more than a month for the information, the case was declined because the Department did not provide the requested information.

State Case Three

In July 2018, a DHET deputy reported that he observed a sedan travelling northbound on I-5 following a vehicle too closely for the flow of traffic. In his report, he noted the vehicle's front windows were tinted and the vehicle was travelling at approximately six miles over the speed limit, so he conducted a traffic stop. The deputy indicated that during the traffic stop he smelled marijuana inside the vehicle. He then asked the driver for his license and insurance. He also asked about the driver's destination. The driver said he was going to visit an injured uncle in Fontana. The deputy felt his travel plans did not make sense, so he conducted a wanted persons and DMV check on his MDC. When the deputy returned to the vehicle after conducting his check, he noted in his report that the driver made small talk that could possibly be nervous behavior. The deputy then asked the driver to exit the vehicle and asked him if there were drugs or firearms in the vehicle. The report then notes that the deputy asked if he could search the vehicle for the source of the marijuana and the driver said, "Ya. Alright." During the search, the deputy located one pound of methamphetamine, a handbag with a few plastic containers of marijuana and a marijuana pipe, 585 pills of oxycodone, a firearm, and \$5,100 in cash.

The traffic stop was audio and video recorded. However, the fact that audio and video evidence existed was not documented in the report or provided to the District Attorney when the case was submitted for filing consideration. A review of the video reveals several concerns. First, the video is activated about thirty seconds before the deputy positions his patrol car behind the sedan. During those thirty seconds, the sedan was travelling at the same speed as the other vehicles on the road and there were no vehicles in his lane. Second, while the report states the deputy asked if he could search the vehicle, the deputy can clearly be heard on the audio saying, "I am gonna search real fast so you can get out of here." While the driver responded, "Alright," it was to the deputy's statement not to a question posed by the deputy. The deputy then instructed the driver to get into the back

seat of his patrol car where he remained throughout the search. This occurred about five minutes after their initial contact. Third, the deputy asked where the marijuana was, and the driver asked if he could show him. The deputy refused to allow the driver to do so and was joined by a second deputy about six minutes after the stop. About five minutes later, one of the deputies retrieved a clear bag of what looks like narcotics and a gun from within the vehicle. The fact that a second deputy arrived on scene and assisted with the search is also omitted from the report.

The Deputy District Attorney who reviewed this case for filing requested additional information, including any audio or video if it existed. After waiting more than a month for the information, the case was declined because the Department did not follow up with any of the requested information.

It is impossible to know whether the dismissal rate of cases in state court would have been closer to the one-third of cases dismissed at the federal level if the fact that the traffic stops were audio and/or video recorded had been documented in all the reports. However, we do know that in all the state cases involving arrests that occurred between October 1, 2017, and September 30, 2018, in which guilty or no contest pleas were entered, no motions to suppress evidence or otherwise dismiss the cases on any other grounds were litigated.

From listening to audio and viewing video recordings, an attorney can independently assess whether police reports are consistent with the audio and/or video evidence. An attorney can also assess whether a consent to search was voluntary, whether a pat down search was appropriate, whether the detention or search was prolonged, whether all material witnesses were disclosed in the reports, and whether any admissions made by a suspect violated *Miranda*. A defense attorney cannot make a knowledgeable and intelligent recommendation as to a defendant's proper course of action without such information. It is well known that the Department does not have dash cameras on all of its patrol vehicles and has not yet implemented a body-worn camera program.⁴⁵ Hence, without documenting the existence of audio and/or video recordings of a traffic stop, an attorney

⁴⁵ "Final Report of the Ad Hoc Committee of the Civilian Oversight Commission Regarding Body-worn Cameras and Recommendations of the Sheriff Civilian Oversight Commission," July 26, 2018. Available at <https://coc.lacounty.gov/LinkClick.aspx?fileticket=N3yfPmbNik4%3d&portalid=35>. See also, Editorial Board, Los Angeles Times, "Body cameras for the L.A. County Sheriff's Department? Get on with it," July 31, 2018. Available at <https://www.latimes.com/opinion/editorials/la-ed-sheriff-body-cameras-20180731-story.html>

representing a defendant who had been stopped by a DHET deputy and charged with a crime could reasonably assume no such evidence existed.⁴⁶

Brady information

Another factor that may be contributing to the differences in dismissal rates between federal and state cases is that the LADA treats potential impeachment or exculpatory evidence differently than it is treated by federal prosecutors. U.S. Supreme Court precedent requires prosecutors to disclose potential impeachment and exculpatory evidence. See *Brady v. Maryland* (1963) 373 U.S. 83; and *Giglio v. United States* (1972) 405 U.S. 150. Such impeachment and exculpatory evidence is commonly referred to as *Brady* material.

The LADA's policy on *Brady* defines as impeachment only those allegations in an officer's personnel file that resulted in "[a] finding of misconduct by a Board of Rights or Civil Service Commission that reflects on a prosecution witness's truthfulness, bias or moral turpitude."⁴⁷ The LADA's policy, however, does not require police agencies to provide the names of officers disciplined for conduct involving truthfulness, bias, or moral turpitude. Because of the confidential nature of personnel discipline records in California, such information is often unknown to prosecutors.

Absent specific evidence to support a belief that a constitutional violation occurred or that an officer has *Brady* information in his or her personnel file, a motion to suppress, dismiss, or compel disclosure of evidence is not generally filed. Believing that the filing of any such motions lacks merit or are not likely to be granted, defense counsel may recommend their client accept a plea to a lesser charge or sentence than their client might be facing if they take the case to trial and lose.

In federal court, however, prosecutors are required to disclose to the defense all allegations of peace officer misconduct that reflect on truthfulness or possible bias, even if the information is contained in personnel records.⁴⁸ Federal prosecutors have a duty to examine personnel files upon a defendant's request, and if the

⁴⁶ The Department reported that after an internal review of cases by one of its Constitutional Policing Advisors in October 2018 informing then-Sheriff McDonnell of the failure to document the presence of audio and video recordings in the vast majority of police reports, the District Attorney's Office was advised that DHET stops from July 2016 through August 2018 were audio and/or video recorded. Additionally, all members of the DHET team were advised by their supervisor that they were to always document when any part of a traffic stop was audio or video recorded.

⁴⁷ Los Angeles District Attorney Special Directive 17-03, *available at* <http://da.lacounty.gov/sites/default/files/policies/SD-1703.pdf>.

⁴⁸ United States Attorney Manual, Title 9, Sec. 9-5.100, *available at* <https://www.justice.gov/jm/jm-9-5000-issues-related-trials-and-other-court-proceedings#9-5.100>.

prosecutor is unsure whether material in a personnel file rises to the *Brady* threshold, the information may be submitted to the trial court for an *in camera* inspection. Moreover, the Ninth Circuit Court of Appeals has held that in addition to the requirement that state prosecutors disclose personnel records relevant to a material witness' credibility, they can be required to disclose findings by a judge that an officer has engaged in an unlawful search or seizure or illegally obtained a confession. In *Milke v. Ryan* (9th Cir. 2010) 711 F.3d 998, for instance, a murder conviction based in part on a confession was reversed because the state court did not admit evidence that included court orders from state judges who had held the detective who took the confession committed constitutional violations during prior interrogations.

Recommendations

Based on OIG staff's review of the foregoing federal and state cases, the OIG recommends the following:

Recommendation No. 18: It is recommended that if the DHET is reinstated, personnel with potential *Brady* material in their background not be part of the DHET or any specialized station unit where they would be witnesses.

Recommendation No. 19: It is recommended that if the DHET is reinstated, all traffic stops and searches conducted by DHET deputies be audio and video recorded. If there is a mechanism to video without audiotaping a contact, separate audio equipment must be used and activated during the entire traffic stop and during any questioning of the subjects, whether in the field, during transport, or at the station. Additionally, all incident reports (SH-R-49) must clearly document that the traffic stop was audio and/or video recorded.

Recommendation No. 20: It is recommended that if the DHET is reinstated, all requests for consent to search be followed up with a request to sign a written consent form in the person's primary language. Additionally, if written consent is not obtained, it is recommended that deputies obtain affirmative verbal consent.

Recommendation No. 21: It is recommended that if the DHET is reinstated, the DHET deputies be required to document all civilian and sworn persons present during the traffic stops, searches, and/or suspect statements in cases that lead to an arrest.

Recommendation No. 22: It is recommended that department-wide policy be implemented requiring all Department members who present a case for filing to a prosecutorial agency turn over any audio and/or video evidence at the time the case is presented to the prosecutor and document when any audio, video, and/or other evidence such as photographs are turned over to the prosecution.

Recommendation No. 23: It is recommended that department-wide policy be implemented requiring all supervisors to keep track of case dispositions, including motions to suppress, and review all dismissals to ensure there is not a systemic issue and that the Department complies with its *Brady* obligations. Tracking of case dispositions should include following up on all rejected cases requiring additional investigation and documenting whether cases are resubmitted for filing on the tracking sheet with dispositions.

INTERNAL AND EXTERNAL OVERSIGHT

Supervision of prosecutions arising from the DHET

OIG's review of cases and discussions with supervisorial personnel at the Department revealed that supervisors were not keeping track of the dismissals in federal court, or relaying that information to state prosecutors and defense counsel

With the dismissal of almost one-third of the federal cases filed, Santa Clarita Valley Station supervisors knew or should have known there were potential issues with the DHET. The first case dismissed dates as far back as 2014. Subsequent correspondence from the AUSA who dismissed that case and also a 2016 District Attorney Charge Evaluation Worksheet discussing the same deputy's credibility issues put the Department on notice that one of the Team's members had credibility issues. Nonetheless, that member was kept on the Team until the fall of 2017.

Lack of Analysis of Racial Data

Supervisors also failed to review and analyze the racial data relating to arrests filed in state court. When advocating for the permanent creation of the DHET in 2012, the Department noted that the use of audio and video equipment would be used to "demonstrate that people of all races, nationalities, sex, sexual orientations, etc. are being contacted and checked, proving clear documentation that racial profiling is not occurring."⁴⁹ An analysis of the audio and video, however, would have shown this was not the case and should have alerted supervisors to a potentially problematic trend.

Department of Justice Antelope Valley Case

Even before the federal court dismissals, the Department was forewarned by the U.S. DOJ that engaging in traffic stops that have a disparate impact on minorities can subject the Department to federal scrutiny. On June 7, 2011, Assistant

⁴⁹ White Paper at p. 7.

Attorney General Tom Perez of the DOJ's Civil Rights Division announced its investigation into allegations of racial bias in the Antelope Valley.⁵⁰ The investigation followed a lawsuit filed by Public Counsel and other groups two months earlier against the cities of Lancaster and Palmdale alleging harassment of African-American and Latino residents who were part of the Federal Housing Choice Voucher Program (Section 8). On August 19, 2011, after some initial fact gathering that included a review of obstruction arrests, meetings with the community, and ride-alongs with deputies, Mr. Perez announced the expansion of DOJ's investigation into allegations that Department personnel at those stations engaged in a pattern or practice of racially motivated stops and arrests.

In a letter issued on June 28, 2013, Mr. Perez wrote that the DOJ had concluded "LASD must do more to ensure that deputies adhere to policies, and that supervisors and commanders provide appropriate redirection, guidance, and accountability when errant conduct occurs."⁵¹ Of particular relevance to the DHET's activities is the fact that one of the specific findings made was that stops in the Antelope Valley appeared to be motivated by racial bias in violation of the Constitution and federal statutory law.⁵² This finding was based in large part on the disparate impact of pedestrian and vehicle stops on African-Americans and Latinos. Among the many recommendations, Mr. Perez urged the Department to reassess its emphasis on consent searches and noted that other jurisdictions had significantly more restrained stop and consent-search policies.⁵³

The DOJ's settlement agreement with the Department emphasized the need to "develop and implement a protocol for the collection and regular analysis of data [including of consent searches] to assess whether there are trends and patterns that indicate bias or practices that otherwise run counter to constitutional and effective policing."⁵⁴ In the settlement agreement, the Department agreed that it would include a regression analysis⁵⁵ in its review of data in the Antelope Valley to

⁵⁰ Antelope Valley for purposes of the investigation encompassed the territory patrolled by personnel assigned to the Department's Lancaster and Palmdale stations.

⁵¹ Letter to Sheriff Baca from the Civil Rights Division of the Department of Justice dated June 28, 2013, at p. 1, last accessed at https://www.justice.gov/sites/default/files/crt/legacy/2013/06/28/antelope_findings_6-28-13.pdf.

⁵² (*Id.* at p. 22.)

⁵³ *Id.* at p. 35, fn. 11. In New Jersey, for instance, consent searches of vehicles without independent reasonable suspicion violate their state constitution and in Washington, the use of pretext stops for warrantless searches or seizures violates their state constitution.

⁵⁴ See paragraph VI of the Settlement Agreement filed April 28, 2015, pages 17 through 19, *available at* <https://www.justice.gov/crt/case-document/file/934156/download>.

⁵⁵ A regression analysis is a statistical technique that can be used to help solve or predict information necessary to make policy decisions.

determine whether law enforcement activity had a disparate impact on any racial or ethnic group.⁵⁶

Of additional relevance is that the settlement agreement mandates that all Antelope Valley “deputies equipped with body-worn audio or video recorders shall record all requests for consent to search and the individual’s response. Where a subject is Limited English Proficient, the deputy shall affirmatively inform the subject in the appropriate non-English language.”⁵⁷ While the settlement agreement was limited in application to the Lancaster and Palmdale stations, it provided a road map to the Department on how to analyze data to identify any troubling trends or issues relating to racial profiling and/or the disparate impact of their law enforcement activity on particular racial or ethnic groups. The agreement further provided guidance on the importance of documenting consents to search for deputies equipped with body-worn cameras. This is important because to date, the Department does not have a department-wide body-worn camera program but permits deputies to use personal body-worn cameras and recording equipment without any guidance or policy. This leaves deputies who use their own recording devices with complete discretion on whether and when to activate their equipment, how long they retain their recordings, whether they need to document the fact that an incident was recorded, and whether to turn over their recordings as evidence in criminal cases.

Recommendations

Based on OIG staff’s review of the Department’s lack of oversight of the DHET and the lessons which should have been learned from the DOJ’s oversight of the Lancaster and Palmdale stations, the OIG recommends the following:

Recommendation No. 24: It is recommended that the Department do more to hold deputies accountable for failing to adhere to policies, particularly those policies in place to ensure compliance with the Constitution such as policies relating to detentions and searches.

Recommendation No. 25: It is recommended that if the DHET is reinstated, the Department review and analyze relevant data semi-annually to determine whether the Team’s activities have a disproportionate impact on any racial, ethnic, or other protected group.

⁵⁶ *Ibid.*

⁵⁷ See paragraph III of the Settlement Agreement filed April 28, 2015, page 10, *available at* <https://www.justice.gov/crt/case-document/file/934156/download>.

Recommendation No. 26: It is recommended that if the DHET is reinstated, at least one member of the DHET be a fluent Spanish speaker who possesses a County Language Proficiency Certificate.

CONCLUSIONS

The data, records, and other information OIG has reviewed for purposes of this report show that DHET practices had a constitutionally troubling impact on Latino drivers. They were stopped and searched by the DHET at a much higher rate than drivers of other races or ethnicities. Furthermore, the rate of successful arrests and prosecutions of those stopped and searched by the DHET was low.

Moreover, in stops during which drugs were found and arrests were made, OIG identified numerous problems. Approximately one-third of the federal criminal filings were dismissed by the federal courts or by the prosecutors. In the state court filings, potential discovery violations may have occurred. An analysis of police reports and comparison with video of the traffic stops together with the DOJ's findings in the Antelope Valley, should have alerted supervisors about the possibility that the DHET's actions could have a disparate impact on Latinos. Written policies and procedures as well as periodic audits of the police reports and video of the stops not only would have been prudent, but also should have been mandated before authorizing the creation of the Team in 2012.

Without appropriate oversight of the DHET by supervisors, the Department was not able to assess whether any practices the DHET engaged in ran contrary to constitutional policing. The Team therefore continued to operate unchecked until November 2018, when the Team was suspended. Given the findings addressed in this report, the DHET should not be reinstated without the Department's first creating and then implementing strict guidelines, supervision, and appropriate policies to govern deputies' conduct.

OIG RECOMMENDATIONS

Recommendation No. 1: It is recommended that before any deputy is assigned to the DHET team, he or she, at minimum, receive training on Drug Trafficker Interdiction, Drug Trafficking Investigations, and Drug Identification Packaging, along with any other specialized highway drug-interdiction training.

Recommendation No. 2: It is recommended that before any supervisor is assigned to supervise the DHET, he or she receive training on Narcotic and Specialized Unit Supervision.

Recommendation No. 3: It is recommended that all DHET supervisors and deputies attend annual training on search-and-seizure law updates and on expert testimony.

Recommendation No. 4:

It is recommended that all DHET supervisors and deputies attend biannual training on racial profiling and cultural diversity.

Recommendation No. 5: It is recommended that a written policy or unit order be implemented for the DHET and/or any other specialized station unit that sets forth the goals and expectations of the team, as well as specific guidance on how to develop legally-sound probable cause for pretextual traffic stops and any resulting detentions.

Recommendation No. 6: It is recommended that the Department have a stand-alone policy that clearly prohibits racial profiling.

Recommendation No. 7: It is recommended that the Department ensure all unit orders are properly vetted in accordance with MPP Section 3-09/340.00, Department Information.

Recommendation No. 8: It is recommended that the Department ensure adherence to California Government Code section 25355 and County Fiscal Manual Section 2.4.2, Donation Reporting Requirements, when receiving donations.

Recommendation No. 9: It is recommended that station management work with the Department's Administrative Services Division to ensure that the in-car video system purchased by the City of Santa Clarita in 2015 for DHET's use is properly accounted for.

Recommendation No. 10: It is recommended that the Department issue department-wide policy and training on the use, retention, and proper reporting when capturing any public contact on an in-car video, body-worn camera, and/or audio recording system before requiring or allowing deputies to use such devices in the course of their duties.

Recommendation No. 11: It is recommended that the Department develop a department-wide policy requiring deputies to articulate the reasons for seeking a consent search as is already required by the Palmdale and Lancaster stations and the DOJ court-enforceable settlement agreement.

Recommendation No. 12: It is recommended that the Department issue department-wide guidelines and training specifically related to the risks associated with unnecessary over-detentions of stopped motorists.

Recommendation No. 13: It is recommended that if the DHET is reinstated, all Team members limit the length of a traffic stop to a reasonable amount of time necessary to accomplish the purpose of the stop, unless separate and additional articulable suspicion to believe a crime was committed is developed during the stop.

Recommendation No. 14: It is recommended that if the DHET is reinstated, Team members be required to document the length of time spent on consent searches that do not result in an arrest and supervisors be required to conduct periodic audits of any audio/video of the stop/search to ensure searches are within the scope of the consent and are not unreasonably prolonged.

Recommendation No. 15: It is recommended that if the DHET is reinstated, the Team supervisors develop periodic audits and analyses of its stop data or other metrics that would enable the Department to measure the efficiency and effectiveness of the unit.

Recommendation No. 16: It is recommended that if the DHET is reinstated, the Audits and Accountability Bureau conduct periodic audits of the DHET's backseat detention practices similar to the audits conducted on the Palmdale and Lancaster stations in Project No. 2016-2A and Project No. 2017-14-A.

Recommendation No. 17: It is recommended that if the DHET is reinstated, supervisors regularly coordinate the review and analysis of stop data to determine if any racial or ethnic group is being disproportionately impacted by the DHET's procedures. In conducting such analysis, supervisors should be guided by the methods set forth in the DOJ court-enforceable settlement agreement.

Recommendation No. 18: It is recommended that if the DHET is reinstated, personnel with potential *Brady* material in their background not be part of the DHET or any specialized station unit where they would be witnesses.

Recommendation No. 19: It is recommended that if the DHET is reinstated, all traffic stops and searches conducted by DHET deputies be audio and video recorded. If there is a mechanism to video without audiotaping a contact, separate audio equipment must be used and activated during the entire traffic stop and during any questioning of the subjects, whether in the field, during transport, or at the station. Additionally, all incident reports (SH-R-49) must clearly document that the traffic stop was audio and/or video recorded.

Recommendation No. 20: It is recommended that if the DHET is reinstated, all requests for consent to search be followed up with a request to sign a written consent form in the person's primary language. Additionally, if written consent is not obtained, it is recommended that deputies obtain affirmative verbal consent.

Recommendation No. 21: It is recommended that if the DHET is reinstated, the DHET deputies be required to document all civilian and sworn persons present during the traffic stops, searches, and/or suspect statements in cases that lead to an arrest.

Recommendation No. 22: It is recommended that department-wide policy be implemented requiring all Department members who present a case for filing to a prosecutorial agency turn over any audio and/or video evidence at the time the case is presented to the prosecutor and document when any audio, video, and/or other evidence such as photographs are turned over to the prosecution.

Recommendation No. 23: It is recommended that department-wide policy be implemented requiring all supervisors to keep track of case dispositions, including motions to suppress, and review all dismissals to ensure there is not a systemic issue and that the Department complies with its *Brady* obligations. Tracking of case dispositions should include following up on all rejected cases requiring additional investigation and documenting whether cases are resubmitted for filing on the tracking sheet with dispositions.

Recommendation No. 24: It is recommended that the Department do more to hold deputies accountable for failing to adhere to policies, particularly those policies in place to ensure compliance with the Constitution such as policies relating to detentions and searches.

Recommendation No. 25: It is recommended that if the DHET is reinstated, the Department review and analyze relevant data semi-annually to determine whether

the Team's activities have a disproportionate impact on any racial, ethnic, or other protected group.

Recommendation No. 26: It is recommended that if the DHET is reinstated, at least one member of the DHET be a fluent Spanish speaker who possesses a County Language Proficiency Certificate.