

**REPORT OF THE**  
**RAMPART INDEPENDENT REVIEW PANEL**

*A Report to the Los Angeles Board of Police Commissioners*  
*Concerning Special Order 40*

February 1, 2001

## **SPECIAL ORDER 40**

### **Introduction and Summary**

Prior to 1979, the Los Angeles Police Department *required* officers who came into contact with a person suspected of being in the United States illegally to determine the person's immigration status and notify the United States Immigration and Naturalization Service ("INS") if the person was an undocumented alien. This was required even if the person was not the subject of a police investigation or a criminal charge. Many in the communities served by the LAPD believed that this requirement led to widespread abuse, and Latino citizens, legal immigrants and undocumented persons felt intimidated and threatened by the very officers who were charged with their protection. In addition, the LAPD itself was concerned that the immigrant communities would not report crimes or assist the Department in criminal investigations if individuals were afraid that any contact could lead to deportation.

To address these concerns, the LAPD formed an *ad hoc* committee to study the issues and to formulate policies and procedures concerning contacts with undocumented persons – whether as suspects, crime victims, or witnesses. As a result of the committee's recommendations, on November 27, 1979, Chief of Police Darryl Gates issued Special Order 40, which is now codified in the LAPD Manual.<sup>1</sup>

As set forth in the Manual, Special Order 40 provides that "[u]ndocumented alien status in itself is not a matter for police action. It is, therefore, incumbent upon all employees of this Department to make a personal commitment to equal enforcement of the law and service to the public, regardless of alien status." Special Order 40 precludes LAPD officers from initiating "police action with the objective of discovering the alien status of a person," and from arresting or booking a person for "illegal entry" into the United States.<sup>2</sup>

Former Officer Rafael Perez has alleged that certain Rampart CRASH officers routinely violated both Special Order 40 and the due process rights of undocumented persons in the Rampart Area. In addition, the Los Angeles Latino community has charged that LAPD officers threaten and harass street vendors, day laborers, and suspected criminals with the specter of

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<sup>1</sup> LAPD Manual 2000, Vol.1, Section 390; *id.*, Vol. 4, Section 264.50.

<sup>2</sup> *Id.*

deportation. These charges have raised questions about the scope of Special Order 40 and compliance with the Order by LAPD officers.

On April 12, 2000, the Los Angeles City Council asked the Board of Police Commissioners to bar INS and Border Patrol agents from LAPD facilities unless they are working on specific federal investigations, and then only with permission of the facility's commanding officer. The City Council also asked that the Police Commission reaffirm its support for Special Order 40. The Police Commission, in turn, asked the Rampart Independent Review Panel to evaluate Perez's allegations, review the Department's compliance with Special Order 40, and make recommendations regarding the Department's policies and procedures with respect to undocumented aliens and its relations with INS.

As articulated by LAPD officials to members of the Panel, the Department's policies and procedures resulting from Special Order 40 are more restrictive than as written in the Department's Manual. The policies and procedures articulated by the Department preclude officers from asking a person about his or her alien status and from notifying the INS about a person's undocumented status unless the person has been arrested. Moreover, in practice, LAPD officers do not routinely notify INS about the immigration status of individuals who have been arrested. The Department's policies and procedures, however, do not preclude LAPD officers from participating in task force investigations, responding to requests from the INS for information regarding suspected illegal aliens, or assisting INS agents in the execution of arrest warrants.

We believe that most officers comply with the Department's policies and procedures in their interactions with the immigrant community. The Department, however, lacks controls over, and documentation of, contacts between LAPD officers and INS agents. Consequently, some abuses may have occurred in circumstances where LAPD officers were assisting INS agents to identify undocumented criminal aliens. Any such abuses – whether or not they actually violated the LAPD Manual and, even if limited, undermine the credibility of the LAPD with the immigrant communities it serves.

LAPD's policies and procedures regarding undocumented aliens enhance the Department's ability to obtain cooperation of undocumented aliens in the investigation of criminal activity and protect the rights of the immigrant communities, while permitting LAPD officers to cooperate with and provide information to the INS in appropriate circumstances.

Nevertheless, to provide adequate guidance to LAPD officers and enhance public understanding of the Department's articulated policies and procedures respecting undocumented persons, the provisions of Special Order 40 set forth in the LAPD Manual should be revised to more accurately reflect these policies and procedures. The Department also needs to provide better training for officers with respect to Special Order 40<sup>3</sup> and to more closely monitor contacts between LAPD officers and INS agents. To guard against potential abuses, LAPD officers should be required to obtain the authorization of a supervisor before assisting or providing information to INS agents and to document all contacts with INS agents. Finally, the Department needs a better internal reporting system and better complaint procedures for the investigation of possible violations of Special Order 40.

### **Findings**

**1. The LAPD's articulated policies and procedures under Special Order 40 relating to undocumented aliens are not reflected in the LAPD Manual.**

The policy of Special Order 40 as currently set forth in the Los Angeles Police Department Manual is as follows:

Undocumented alien status in itself is not a matter for police action. It is, therefore, incumbent upon all employees of this Department to make a personal commitment to equal enforcement of the law and service to the public regardless of alien status. In addition, the Department will provide special assistance to persons, groups, communities and businesses who, by the nature of the crimes being committed upon them, require individualized services. Since undocumented aliens, because of their status, are often more vulnerable to victimization, crime prevention assistance will be offered to assist them in safeguarding their property and to lessen their potential to be crime victims.

Police service will be readily available to all persons, including the undocumented alien, to ensure a safe and tranquil environment. Participation and involvement of the undocumented alien community in police activities will increase the Department's ability to protect and serve the entire community.<sup>4</sup>

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<sup>3</sup> As used in this report, Special Order No. 40 refers to the Department's policies and procedures as articulated by officials of the LAPD and as set forth in the LAPD Manual at Vol. 1, Section 390 and Vol. 4, Section 264.50.

To implement this policy, the Department's Manual provides as follows:

ENFORCEMENT OF UNITED STATES IMMIGRATION LAWS. Officers shall not initiate police action with the objective of discovering the alien status of a person. Officers shall not arrest or book persons for violation of Title 8, Section 1325 of the United States Immigration Code (Illegal Entry).<sup>5</sup>

As originally issued, Special Order 40 also required the LAPD to adhere to the following procedures in connection with the arrest of an undocumented alien:

ALIEN ARREST INFORMATION—NOTIFICATION. When an undocumented alien is booked for multiple misdemeanors, a high grade misdemeanor, or a felony offense, or has been previously arrested for a similar offense, the arresting officer shall [notify the Detective Headquarters Division [DHD] of the arrest and mark "Undocumented Alien" on the arrest report].

DETECTIVE HEADQUARTERS DIVISION, HEADQUARTERS SECTION—RESPONSIBILITIES. [The Division shall]

- Record the information provided in the DHD Undocumented Alien Log.
- Notify the [INS] via teletype of the arrest of the individual.
- Forward daily arrest reports marked "Undocumented Alien" to the [INS].<sup>6</sup>

In its current form, the LAPD Manual does not require the Headquarters Section Desk Officer in DHD to contact the INS once a person of questionable alien status has been booked for a felony offense, a high-grade misdemeanor or multiple misdemeanors.<sup>7</sup> Indeed, other than

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<sup>4</sup> LAPD Manual 2000, Vol. 1, Section 390. See Special Order 40 at 1.

<sup>5</sup> LAPD Manual 2000, Vol. 4, Section 264.50. See Special Order 40 at 1.

<sup>6</sup> The requirements pertaining to the sending of arrest reports to DHD and the INS were eliminated in Special Order 18 issued on September 5, 1980 by Chief Gates.

<sup>7</sup> Other than Special Order 18, see note 6 *supra*, the LAPD was unable to provide the Panel with documentation of the evolution of Special Order 40 as issued by Chief Gates in 1979

precluding LAPD officers from initiating police action to discover “the alien status of a person” and arresting persons for “illegal entry,” there are *no* procedures in the Manual that guide officer compliance with the policies of Special Order 40. The Manual does not bar an LAPD officer from notifying INS of the immigration status of a person arrested for a crime if the officer learns of that information. Further, nothing in the Manual actually bars an officer who is investigating an individual for criminal activity other than an immigration violation from asking that person about his or her immigration status and then advising INS.<sup>8</sup>

Interviews with Chief of Police Bernard C. Parks and other LAPD officers indicate that, in practice, the Department’s procedures vary from the procedures originally set forth in Special Order 40 and go beyond the limited provisions of Special Order 40 that remain in the Manual.<sup>9</sup> Indeed, as articulated, the procedures are more restrictive than as written. First, LAPD officers are not supposed to ask individuals suspected of criminal offenses, crime victims, or witnesses, about their immigration status.<sup>10</sup> Second, in practice LAPD officers do not notify the INS of the arrest of an illegal alien. Only after a person has been arrested, arraigned, and held in the county jail pending prosecution will his or her alien status be investigated by the INS, and that is in cooperation with the Los Angeles County Sheriff, not the LAPD.<sup>11</sup> Thus, there is no reason for an LAPD officer to even ask a person who has been arrested for a crime about his or her alien

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into its current form in the LAPD Manual.

<sup>8</sup> Thus, lacking probable cause to arrest a gang member lawfully stopped on the basis of “reasonable suspicion,” an officer could theoretically ask about the member’s immigration status and then notify INS without violating the Manual as written.

<sup>9</sup> See note 1, *supra*.

<sup>10</sup> The one exception noted by an LAPD official is when officers make an arrest in connection with an alien smuggling operation and the status of the individuals who have been brought into the United States illegally is part of the federal crime.

<sup>11</sup> The Sheriff’s Department follows the following procedure for investigating the status of undocumented inmates. On the booking forms used by the LAPD – and most other law enforcement agencies in Los Angeles County – an arrestee indicates his or her country of birth. Once an arrestee is held for trial and sent to the county jail, the Sheriff’s Department provides INS with the names of the inmates who indicate they were born outside the United States. If INS records show the person is undocumented, INS will track the person through the criminal justice system. Only after the undocumented person has served a criminal sentence will deportation proceedings be initiated.

status, although that appears to be permitted under the Department's articulated policies and procedures.

In practice, under Special Order 40 no officer should ever have cause to refer a person to INS except as part of a task force, where an INS warrant has been issued for illegal re-entry, or the rare instance in which LAPD officers arrest an individual engaged in alien smuggling.<sup>12</sup> LAPD officers are not supposed to refer an undocumented person to INS if the person is merely a victim or witness to a crime or comes into contact with the Department during a family disturbance, during the enforcement of minor traffic offenses, or when seeking medical treatment.

As articulated by LAPD officials, the Special Order 40 policies and procedures do not prohibit LAPD officers from interacting with INS agents for investigative purposes. For example, Special Order 40 would not preclude a police officer from providing names of known gang members to the INS in response to a request from the INS. Nor would Special Order 40 bar LAPD participation in a task force with the INS, where the INS is investigating *criminal* violations of the federal immigration laws at the same time that the LAPD is investigating violations of state criminal laws relating to, for example, narcotics trafficking or violent crimes.<sup>13</sup> Finally, it would not prevent LAPD officers from assisting the INS to arrest a particular individual for whom a warrant had been issued. Nothing in the Manual, however, provides any guidance as to what contacts with INS are appropriate under Special Order 40.

**2. The LAPD does not provide officers with specialized training relating to the LAPD'S Special Order 40 policies and procedures or maintain separate records relating to Special Order 40.**

LAPD officers do not receive any specialized training on how to comply with either the written or unwritten policies or procedures of Special Order 40. Officers are instructed in a general fashion on all policies at the Police Academy and are required during their probationary

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<sup>12</sup> Officers are required to contact INS where they arrest or detain an individual whose criminal history reflects that there is an outstanding INS warrant.

<sup>13</sup> That interaction would not result in deportation until a criminal undocumented person has been through either the United States criminal justice system (for violation of a criminal immigration law) or the California criminal justice system.

period to exhibit knowledge and understanding of all policies and procedures. Students in the Academy and graduates in their probationary period are not, however, tested specifically on Special Order 40 or its procedures. Nevertheless, officers interviewed by members of the Panel indicated that they are told explicitly not to treat undocumented persons differently than they treat naturalized citizens and that a person's alien status should not be questioned by an officer until after an arrest has been made.

The LAPD does not have any record system in place for tracking contacts that individual officers may have with the INS. As part of the Board of Inquiry's investigation in response to the Rampart corruption scandal, the LAPD gathered *all* watch commander logs from the Rampart Area that made reference to officer contacts with undocumented persons. According to those LAPD records, there were only 11 such contacts.<sup>14</sup> Because of the volume of records maintained by the LAPD and the lack of any specific procedures for maintaining records relating to undocumented persons, the LAPD contends that to search for and find additional records would be virtually impossible.

**3. As articulated by LAPD officials, the Special Order 40 policies and procedures strike an appropriate balance that meets LAPD's law enforcement needs, protect the rights of the immigrant communities, and allows for appropriate assistance by LAPD to the INS.**

Special Order 40 recognizes that undocumented aliens are frequently victimized by criminals and need the protection of the police. Most community members interviewed for this report indicate that they support the policies of Special Order 40. Further, virtually all law enforcement officers support the policies of Special Order 40. They stated that it is their obligation to protect undocumented persons from crime and to prosecute criminals who victimize them. The officers we spoke with believe they have an ethical obligation to assist victims. They further believe that the same individuals who victimize undocumented persons also victimize citizens or legal immigrants.

Special Order 40 seeks to ensure that the entire community, even undocumented persons who are victims or witnesses, will help the police solve crime. On balance, law enforcement considers it to be more important to solve felonies and high-grade misdemeanors than to enforce

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<sup>14</sup>The contents of the 11 records are discussed more below. See p. 13, *infra*.



the immigration laws, which for first time offenders is only a low-grade misdemeanor. *All* law enforcement officers interviewed for this report agreed that it is crucial for effective law enforcement that victims and witnesses of crime feel safe with the police. Identification of local police with immigration enforcement could lead some residents to avoid interaction with the police, even when the resident is a victim of or witness to a crime. Victims will not come forward if they believe that, in response to their calls, the INS will appear at their doors. Witnesses are less likely to testify as part of criminal prosecutions if they suspect that INS agents await them when they complete their testimony. Although immigrant trust of the LAPD remains an issue, many long-time LAPD officers stated that there is a marked difference in the attitude of the immigrant community respecting the LAPD since Special Order 40 was issued.<sup>15</sup>

To permit officers to refer undocumented persons they encounter in the course of their duties to INS would allow for the possibility of arbitrary and discriminatory enforcement activity targeting individuals of Hispanic descent. Special Order 40 attempts to ensure that all undocumented persons are given equal treatment under the law.

Special Order 40 does not preclude the LAPD from responding to requests by INS for information regarding an individual's criminal activities or whereabouts, or from assisting INS to execute arrest warrants for violations of the immigration laws. Nor does Special Order 40 preclude LAPD from providing tactical assistance when, for example, INS is planning to conduct an operation that may have implications for public safety. Further, through the Los Angeles County Sheriff's Department, criminal undocumented persons are ultimately referred to INS once the criminal process has commenced. Thus, Special Order 40 does not excessively hamstring LAPD and local law enforcement from providing appropriate assistance to and cooperation with immigration officials.

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<sup>15</sup> Virtually all California state police departments and sheriff's departments have policies similar to Special Order 40. The LAPD policies and procedures are, however, more restrictive than other policies reviewed by the Panel in terms of the limitations on police officers in dealing with undocumented aliens. For example, Santa Ana Police Department Order No. 340 permits referrals to INS by an arresting officer with the approval of the Watch Commander, and San Diego Police Department Order 6.18 permits referrals to INS if there is no probable cause to arrest, but merely a "reasonable suspicion" that criminal activity unrelated to immigration status exists.

Even absent Special Order 40, federal law would bar LAPD officers from enforcing the immigration laws unless they were given specialized training.<sup>16</sup> Therefore, by precluding officers from stopping persons to determine their alien status, Special Order 40 does not narrow the existing federal law. Officers with every California law enforcement agency interviewed for this report, including members of the LAPD, indicated that they do not advocate training their officers to enforce the immigration laws. They believe that the time required for the training and the effort that would be required to capture undocumented persons would have an adverse impact on law enforcement generally.

Officers are not permitted by state law to stop someone they suspect has committed only a misdemeanor – such as illegal entry into the country – unless the misdemeanor is committed in his or her presence. Therefore, Special Order 40 comports with state law.

Federal law prohibits any government entity or official from restricting communication with INS regarding a person's immigration status.<sup>17</sup> As written, Special Order 40 does not prohibit LAPD officers from communicating information known about an individual's alien status to INS. As practiced, it precludes LAPD officers from inquiring about an individual's alien status, which does not appear to be inconsistent with the federal law.<sup>18</sup> Moreover, information regarding the arrest of an undocumented alien is communicated by the Sheriff's Department to the INS, which ultimately determines the alien's immigration status.

Advocates for immigration reform believe that the importance of enforcing the immigration laws outweighs the importance of garnering the trust of the undocumented community and its participation in law enforcement. Some members of the community indicate that Special Order 40 hampers police by preventing them from using a legal means to rid the community of known criminals when the police lack sufficient evidence to prosecute the person for his or her criminal activities. As noted above, undocumented aliens arrested and booked for criminal acts are referred to INS by the Sheriff's Department. Given the importance of gaining the cooperation of undocumented aliens to enable the LAPD to investigate crimes and protect the

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<sup>16</sup> 8 United States Code, Section 1357(g)

<sup>17</sup> 18 United States Code, Section 1373.

<sup>18</sup> Special Order 40 is silent on what LAPD officers are supposed to do if they happen to learn of information about the undocumented status of an alien who has not been arrested.

Los Angeles' immigrant communities, the policies and procedures articulated by LAPD officials constitute a reasonable and appropriate accommodation of various interests and concerns.

**4. Cooperation between LAPD officers and INS agents may have resulted in violations of the Department's policies and procedures regarding undocumented aliens.**

In interviews with LAPD and District Attorney investigators, former Officer Rafael Perez alleged that he and certain other CRASH officers repeatedly violated Special Order 40. Perez alleged that between six and eight federal agents from INS and the Bureau of Alcohol, Tobacco and Firearms ("ATF") would occasionally work at the Rampart community police station on Friday nights and Saturdays as part of a task force that existed before Perez joined Rampart CRASH.

Perez stated that two agents, one from INS and one from ATF, were in charge of the task force and worked out of the Rampart station.<sup>19</sup> According to Perez, when a CRASH officer wanted someone deported *for any reason*, the officer would simply call up INS and "they'd come handle it. And they [sic] guys would disappear. They'd get deported."

Perez also stated that CRASH officers would sometimes go out at the request of the federal agents and conduct "street sweeps" looking for people who had been deported in the past. For example, CRASH officers would go to a person's home and take him to the station where INS and ATF were waiting or the officers would meet with agents who were riding around in unmarked vehicles waiting for the officers to call in the location of a "suspect." Then, according to Perez, the agents would tell the CRASH officers how to craft the affidavit they had to provide to help the agents establish probable cause for an arrest. Perez alleges that the ATF once instructed him, for example, to write that, "you were driving down the street, saw this guy, detained him, we happen to come along and saw you. As soon as you let him go, we did – you know, we detained him to do our investigation."

Perez also alleged that certain CRASH officers referred undocumented persons to the ATF and INS when those persons had witnessed the officer's improper behavior, or had filed a personnel complaint about the officer. Although Perez said he never asked the agents if they knew *why* the CRASH officers referred undocumented persons for deportation, the circumstances indicated that the agents *did* know. For example, Perez stated:

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<sup>19</sup> As explained below, the federal agencies interviewed for this report indicate that there

[I]f somebody – Snoopy from 18th Street came in and made a complaint against a CRASH officer. And on Friday night, when ATF shows up, some of the guys would go and talk to him. Da, da, da, da. And, you know, ATF, by the way, has a book of every gang member, every Crazy Rider, let's say, that was in – in the Crazy Rider Gang. They know them all by monikers, their first names, who's been deported, who hasn't.

They would vigorously go out and search and then try and find those guys that have made complaints against CRASH officers, for the purposes of deporting them. That I know by conversations that have taken place within the CRASH unit and the subsequent result of people being deported by these agents.

Perez also stated that he would keep a record of the alien status of suspected gang members on his field investigation cards. He would refer to these cards later when the ATF or INS wanted him to get “bodies.”

The arrest of Carlos Guevara exemplifies Perez's allegations. Guevara was arrested in January, 1998. Perez testified that it was a rainy night and the INS agents were at the station. One agent approached Perez and said “You guys got anything going on? I know it's raining, but get us a body or something.” Perez then checked his identification cards to see if he had come across any gang members that had illegally re-entered the country. He came across the name of Carlos Guevara.

Perez went to Guevara's residence with his partner. They knocked on the door and Guevara's girlfriend answered. At the officers' insistence, she went to wake up Guevara. Perez and his partner followed, despite the protestations of other individuals in the residence. The officers told Guevara they needed to talk, and he asked if they could talk at his home. The officers refused. They handcuffed Guevara and took him to the station, where they handed him over to the INS.

According to Perez, a couple of weeks later, one of the INS agents told Perez that he was to say in an affidavit that he and his partner had stopped Guevara on the street, and at that moment INS happened to drive by and took over the detention.<sup>20</sup> Guevara has since been convicted of illegal re-entry and is serving five years imprisonment, after which deportation proceedings will presumably be initiated.

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is no task force with this make-up in operation at this time.

<sup>20</sup> Perez stated that he does not recall the names of any of the involved INS agents, but he

No one in the LAPD has yet corroborated Perez's allegations. In interviews with members of the Panel, captains in charge of Rampart when Perez was working Rampart CRASH denied being aware that ATF or INS agents were formally working out of the Rampart station or that the agents had desks at the Rampart station. The captains were housed at the main Rampart station, while Perez and Rampart CRASH worked out of a satellite facility. The captains would usually visit the satellite facility during the week-day shift. Perez testified that the federal agents worked out of the station mostly at night on the weekends. Also, the federal agents generally work in plainclothes, and most officers interviewed for this report attest that they could not identify a federal agent unless he or she were pointed out.

Each captain also stated that he did not know of any occasion when an officer under his command had cause to contact an INS agent. Indeed, each stated that if it were called to his or her attention that an officer *had* referred names to the INS, such actions would be grounds for a formal inquiry and would likely be found to be improper.

Few other officers stationed with Rampart CRASH unit were willing to be interviewed. The only former CRASH officer who agreed to be interviewed stated that although ATF and INS officers were occasionally present at the Rampart station, he was unaware that any federal agents were formally working out of the station. Non-CRASH Rampart officers stated that they had never seen an INS or ATF agent in their stations, let alone formally working at a station, and they were not aware of any officer who had referred anyone to INS or ATF agents for deportation.

Indeed, LAPD officers interviewed for this report for the most part expressed surprise at the substance of Perez's allegations and stated that behavior of most LAPD officers comports strictly with Special Order 40. They explained that they understand Special Order 40 to mean that no LAPD officer – unless he or she is part of a federal task force – will have cause to contact the INS for *any* reason, and that under no circumstances should that contact include referring an individual for deportation. They uniformly explained that the LAPD policy regarding undocumented persons provides that officers should treat undocumented persons just like citizens. They asserted that the LAPD is *not* the INS and should not be doing the INS's job.

The LAPD does not specifically maintain records of officer contacts with the INS or with undocumented persons. Therefore, it is virtually impossible at this time to gather officer reports

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claimed he would be able to identify them if he saw them.

relating to contacts with undocumented persons or the INS, or to conduct an effective audit of compliance with Special Order 40 to corroborate or refute Perez' allegations.

The LAPD contends that it has gathered all Rampart Area watch commander logs that refer to these subjects, but the logs indicate that there have been few officer contacts with the INS or undocumented persons. An arrest report of September 16, 1997, attests that two officers stopped a stolen vehicle occupied by several undocumented persons who were "held for INS." The report indicates that these people were also booked for a crime. As originally promulgated, Special Order 40 required the arresting officer to note a person's undocumented status and DHD was required to notify INS. To the extent, however, that this action involved the arresting or booking officer's contacting INS, it is inconsistent with LAPD's current practices.<sup>21</sup>

The remaining ten records provided reflect that officers complied with Special Order 40 as written and in spirit when dealing with the INS. These records reflect that officers, for example, responded to calls for assistance by the INS or helped the INS to serve warrants, which is proper under Special Order 40.

To evaluate Perez's allegations and determine – to the extent possible – whether any Special Order 40 violations occurred, members of the Panel interviewed representatives of the Federal Bureau of Investigation ("FBI"), ATF, and INS about their involvement in the Rampart Area and their coordination and interaction with the LAPD officers working in the area, especially Rampart's CRASH officers. Representatives of the United States Attorney's Office, which is responsible for prosecuting individuals for illegal re-entry into the United States, were also interviewed.<sup>22</sup>

In mid-1997, the FBI initiated a federal task force to investigate and prosecute members of the 18th Street Gang. The FBI was the lead agency coordinating the task force, which included many FBI agents and, for a short period of time, one ATF agent. Although task force agents came into contact with illegal aliens, the primary purpose and focus of the task force was to investigate criminal activity of 18th Street Gang members.

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<sup>21</sup> See p. 5, *supra*.

<sup>22</sup> The U.S. Attorney's Office has no specific information about the interaction between the INS and the LAPD, and no information about whether Special Order 40 was or could have been violated or circumvented by the LAPD.

The FBI worked closely with the United States Attorney's Office to coordinate the investigation and prosecutions. According to the FBI, only two of the many cases arising out of the task force resulted in the filing of immigration charges. Most of the cases were prosecutions involving drug dealing and firearms violations.

The FBI denied that any of its agents made a referral to the INS at that time or assisted any LAPD officer in making such a referral. If the FBI makes a referral of a suspect to another agency, the referring agent is required to complete and file a "FD9 Form," also called a Dissemination Form, indicating that a referral was made. An internal FBI review of the 18th Street Gang task force files revealed no FD9 forms showing referrals to the INS. Although referrals could have occurred without the completion and filing of a FD9 Form, this would have been a violation of FBI policy.

At some point during the task force investigation, the INS approached the FBI with a list of individuals suspected of being in the United States illegally and/or of having returned to the United States after being deported. The INS asked the FBI if any of these individuals were under investigation by the FBI. According to the FBI, there may have been one name that overlapped, but the FBI did not work with the INS to investigate the individuals on the INS' list.

After the 1992 Los Angeles riots, ATF increased its presence in the Rampart Area from only a few agents to approximately 10-12 ATF agents. These ATF agents were to identify, investigate and prosecute firearms violations committed by the various gangs operating in the Rampart Area. To further these goals, ATF joined with LAPD in several task forces between 1994 and 1997. According to ATF, there was no INS involvement in these investigations.

To the extent that an ATF investigation involved the illegal possession of firearms by aliens, ATF worked with INS to establish whether the individual possessing the firearm was an illegal alien. When ATF was investigating suspected firearms violations by an individual or group of individuals who could be aliens, ATF would contact INS to attempt to determine each individual's immigration status.

By early 1997, ATF task forces were discontinued and ATF had only one agent assigned to work in the Rampart Area. The FBI approached ATF and asked if its agent would work with the FBI on the investigation of the 18th Street Gang. ATF agreed to assist informally, but no ATF agent was assigned to work on the FBI's task force. The ATF agent assigned to Rampart

continued to work with Rampart CRASH officers with respect to firearm offenses. In February 1999, ATF pulled out of the Rampart area altogether.

The FBI and ATF agents interviewed by members of the Panel were unaware of any attempts by LAPD officers to circumvent Special Order 40. They indicated that neither the FBI nor ATF sought information about an individual's alien status from the LAPD.<sup>23</sup> Once the Rampart scandal broke, ATF conducted its own internal investigation concerning its involvement in the Rampart Area. According to ATF, its report concluded that ATF agents knew nothing about any improper activity on the part of any officers or agents in the Rampart Area.<sup>24</sup>

INS was involved in the Rampart Area during the time period in question, both as part of an FBI task force and through the "INS Violent Gang Task Force" ("VGTF"). According to a high ranking INS official with oversight responsibility for the VGTF, INS worked very closely with the Rampart CRASH unit to identify undocumented persons in the Rampart Area.

In the mid-1980s, INS established the VGTF to work with other task forces and law enforcement agencies in Rampart to identify undocumented criminal aliens and prosecute them for crimes they may have committed and/or deport them from the United States. Although the VGTF consisted only of INS agents, it worked closely with the LAPD Rampart CRASH officers and agents from other law enforcement agencies working in the Rampart Area.

According to INS, the main purpose of the VGTF was to execute arrest warrants for 18th Street Gang members, most of whom were located in the Rampart Area, for immigration violations. The VGTF agents patrolled every night in the Rampart Area searching for suspected illegal aliens. They had a list of more than 300 violent gang offenders suspected of illegal re-entry into the country and were searching specifically for those individuals and others listed in their databases.

The VGTF worked closely with the CRASH unit to locate the individuals on the illegal re-entry list. There were instances in which the LAPD would finish questioning a suspect and then call a member of the VGTF to ask if the person they were questioning was on the INS arrest

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<sup>23</sup>The FBI and ATF agents who agreed to be interviewed gave their full cooperation. However, these agents were supervisors, not the line agents during the time period at issue, and several were not supervising the agents who were working in Rampart during the relevant time period. The line agents were not made available due to privacy concerns and what was described as a "general reluctance" to go on record about their role in Rampart.

<sup>24</sup>ATF declined to release this report to the Panel.



warrant list or illegal alien list. An INS agent would then go to the Rampart station to question the individual. Even if the subject was not on the INS arrest warrant list, the INS would detain the person if it determined that he or she was not in the country legally. If the person had a criminal record and had re-entered the United States after being deported, he or she would be considered for prosecution. Otherwise, the individual would be subject to deportation proceedings.

There were also instances in which the LAPD helped the INS find an individual on the illegal re-entry list. For example, if a CRASH officer saw five or six individuals standing on a street corner and believed that the named individual was among them, the VGTF agents, with the CRASH officers backing them up and assisting them, would approach the five or six individuals and detain and question them. Whether the named individual was among them or not, the VGTF agents would ask the detainees about their legal status. If INS determined that an individual was in the country illegally – because the individual was on the illegal re-entry list or in a database, or by his or her own admission – he or she would be detained, held overnight, and then brought for questioning the next day by INS agents. These interviews generally took place either at the Rampart station or the INS offices downtown. If any of these individuals satisfied the U.S. Attorney's guidelines for illegal re-entry prosecution, they would be referred for prosecution. Otherwise, they would be subject to deportation.

According to the INS, the procedures outlined above did not cause the LAPD to violate Special Order 40 because the LAPD did not "initiate police action with the objective of discovering the alien status of a person." The INS acknowledged, however, that it could appear that LAPD officers were stopping people for the sole purpose of questioning them about their immigration status, because (1) the LAPD and INS officers were probably dressed the same, and (2) the LAPD was backing up the INS agents on these stops. In fact, because the INS agents were in plain clothes, the only presence of law enforcement that individuals on the street would see would be the black and white LAPD police car.

It can be argued that the LAPD's cooperation did not actually violate Special Order 40 because the INS agents, not the LAPD officers, inquired about a person's immigration status and arrested undocumented persons for immigration violations. Nevertheless, the cooperation described by INS is troubling for several reasons. First, the LAPD captains at Rampart were unaware of any contacts between LAPD officers and INS agents. Second, such cooperation

creates the appearance that LAPD officers were engaged in a police action that had the objective of assisting INS to enforce the immigration laws in violation of the spirit of Special Order 40. Finally, whether or not the INS agents know that an LAPD officer wants someone deported (because, for example, the person had filed a complaint against an officer or for some other reason), such cooperation gives an LAPD officer the opportunity to effect the deportation of undocumented persons for improper reasons. Thus, it is imperative that any cooperation provided by LAPD officers to INS be approved and closely monitored by LAPD supervisors.

**5. The LAPD lacks adequate records of citizen complaints about violations of Special Order 40.**

The LAPD also does not separately identify citizens' complaints about violations of Special Order 40. Thus, although immigrant rights groups interviewed by members of the Panel reported that hundreds of such complaints have been filed during the past five years, the LAPD could find none. According to these organizations – and to their great frustration – none of these alleged complaints had been sustained.<sup>25</sup>

Members of the Latino community and other minority communities agree that the *majority* of officers will not improperly question an individual about his or her alien status. Representatives of the Latino community, however, have made numerous formal complaints about certain officers' violations of the order, and they contend that these complaints have been ignored without exception.

The most persistent complaints are that Latino day laborers and street vendors have been targeted by some officers who work in the areas where the laborers work and by officers who appear to act overzealously to protect the rights of business owners and others who complain about the street vendors. Many people who pursue these jobs have the proper documentation, while others do not. Regardless of their immigration status, there are reports that certain LAPD officers will threaten to deport them and their families as a way of forcing them to leave the sidewalks or street corners.

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<sup>25</sup> Indeed, the Coalition for Humane Immigrant Rights of Los Angeles indicated that the LAPD recently *promoted* an officer, the organization contends, who repeatedly threatened to deport numerous day laborers – many of whom were legally in the country.

According to the Coalition for Humane Immigrant Rights of Los Angeles, these threats have undermined the Latino community's trust in the LAPD. Many Latino immigrants are from countries where the police are corrupt and violent oppressors. When they come to the United States, Latino immigrants – properly documented or not – are wary of the police and reluctant to report crimes or assist in the investigation and prosecution of crimes. Eliminating this reluctance is one of the central justifications for Special Order 40. If Latinos do not fear that they or their families will be deported, they would be more likely to approach and assist the LAPD.

All violations of Special Order 40, even those focused only on a discrete group of immigrants such as day laborers, put the entire foundation of Special Order 40 at risk. The day laborers themselves will not trust LAPD, and they will relate their experiences with their friends and family members. When an LAPD officer threatens one day laborer, the repercussions echo throughout an entire segment of the Latino immigrant community.

Notwithstanding persistent complaints from the Latino and immigrant communities, the LAPD does not maintain separate records of alleged violations of its Special Order 40 policies and procedures. Thus, it is virtually impossible for the Office of the Inspector General to audit the Department's handling of these complaints to ensure that LAPD officers are complying with these policies and procedures and that it is fairly investigating and adjudicating these complaints.

### **Recommendations**

- 1. The LAPD Manual provisions based upon Special Order 40 should be revised to conform to existing practices and provide further guidance to LAPD officers as to the Department's policies and procedures regarding undocumented aliens.**

The LAPD Manual should provide, consistent with current policies and practices, that LAPD officers are not supposed to inquire about a person's immigration status. The Manual should also provide specific guidelines setting forth when it is appropriate for LAPD officers to have contacts with INS. For example, it should provide that LAPD officers may provide information to INS agents in response to requests for information regarding a person's criminal activities or known whereabouts, and they may assist INS in the execution of arrest warrants for criminal violations. It should also provide that LAPD officers must have the supervisory approval before they provide assistance to INS and any participation by LAPD officers in a task force with INS agents must be authorized by a bureau commander or above.

**2. The Department should provide specialized training to officers regarding its policies and procedures under Special Order 40.**

Once the Manual is revised, all officers should be provided training regarding the LAPD's policies and procedures respecting undocumented aliens to ensure compliance with the revised Manual.

**3. The Department needs to maintain records of its contacts with INS.**

The Department lacks adequate records of its contacts with INS. It should mandate that any officer contact with the INS, including any referral to the INS, be recorded. Such recordation should include the time and date of the contact, the identity of the LAPD officer and the identity of the INS agent who was contacted, the circumstances surrounding the contact, the specific purpose for the contact, and the outcome of the contact. These records should be maintained in a separate location and should be readily available for audit and/or review by the Police Commission and the Office of the Inspector General. Records of visits by INS agents to LAPD facilities should also be maintained.

**4. The public should be educated about the Department's policies and procedures, what the police are and are not permitted to do in dealing with undocumented aliens, and the LAPD's efforts to ensure compliance with its policies and procedures.**

**5. INS agents should not be permitted to work out of a community police station without the express permission of the watch commander endorsed by the bureau commander.**

**6. Complaints of Special Order 40 violations – including threats of deportation – should be maintained as a separate subgroup of allegations within the discrimination classification.**

The Office of the Inspector General should periodically audit the Department's handling of these complaints to ensure compliance with the Department's policies and procedures as reflected in the revised Manual.

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