

# INVESTIGATING AND (NOT) DISCIPLINING VIOLATIONS OF SANCTUARY CITY LAWS

PETER MANCINA✳

## I. INTRODUCTION

In May 2017, a San Francisco Police Department officer conducting an investigation of the sale of stolen merchandise in a public plaza was caught on film by an undercover NBC investigatory news crew that was covering a story on the illegal sale of meat in the same area.<sup>1</sup> As the film crew's hidden camera recorded, it captured the officer in plain clothes with his badge clearly displayed approaching Asian and Latino men who were looking at items for sale. He addressed them by saying, "Hey you know why people steal stuff? Because people like you come down here and buy their shit all day. But you know what we've been doing? We've been taking your picture." While pointing at a Latino man, he said, "I've been taking your picture. We're taking a lot of pictures. We're going to have some fun coming for you guys, just wait." The Latino man looking at the items for sale responded, "I don't do nothing, why do you take picture of me?" The officer then threatened him by saying, "Oh yeah, yeah, yeah, wait 'til we get INS [Immigration and Naturalization Services] involved in here too. It's going to be awesome. We're going to ship everybody back to their own country."

After immigrant advocates reported seeing the incident on television to the city legislative representative of the district where the incident occurred, she brought it to the legislature's attention and to the attention of the Police Chief. The Police Department opened an internal affairs investigatory case and the community advocates lodged a formal complaint with the San Francisco Department of Police Accountability that was charged with conducting investigations of police officer violations of department policy. In response, the Chief told the legislator, "Department policy is really clear in terms of, we do not engage in the work of enforcement of immigration laws. It's very clear if that's violated then disciplinary matters have been and will be taken."<sup>2</sup>

However, this kind of behavior was not new to immigrants in this sanctuary city and reminded the public of their skepticism of the police's commitment to abiding by the city's sanctuary laws, as well as to enforcing their own department policies that broadly limit cooperation with

---

✳. Research Associate, Border Criminologies and the Centre for Criminology, University of Oxford; Ph.D. Vanderbilt University, 2016; M.A. Vanderbilt University, 2011; B.A. The Evergreen State College, 2004.

1. Vicky Nguyen et al., *SFPD Investigating Officer Caught on Camera Making Deportation Threats*, NBC BAY AREA (June 2, 2017, 11:00 PM), <https://www.nbcbayarea.com/investigations/SFPD-Investigating-Officer-Caught-on-Camera-Making-Deportation-Threats-425592444.html>.

2. *Id.*

immigration enforcement officials. This particular incident provoked a coalition of immigration rights organizations known as FreeSF to call for the officer's firing.<sup>3</sup> A year after this demand was made, in April 2018, the San Francisco Department of Police Accountability issued its findings from their investigation: the officer had violated department policy and therefore could be subject to discipline. They upheld two accusations made by the complainants that the officer had committed a form of "neglect of duty" for failure to comply with SFPD's general orders on the enforcement of immigration laws and biased policing, two allegations of "conduct reflecting discredit on the department" for biased policing due to race and nationality, one allegation of "discourtesy," and one allegation of "unwarranted action" for making threats.<sup>4</sup> While community advocates had hoped that the report would be sent to the Police Commission for disciplinary review, the officer already left his position in the Police Department three months earlier, in January 2018, and the case was closed.<sup>5</sup>

However, even if the case would have come up for disciplinary review, it is uncertain that any disciplinary action would have taken place. This article examines instances when a police oversight agency in San Francisco, California found local law enforcement officers to have violated sanctuary city policies, and how the Chief of Police responded to the violations from 2004 to 2012. Such an examination attempts to shed light on why sanctuary policies at the city level and department level in San Francisco were disregarded by city police during this period and why they still might be disregarded in 2019. In particular, this examination analyzes all complaints lodged with the Office of Citizen Complaints (OCC)<sup>6</sup> of violations of the San Francisco Police Department's (SFPD) general order on immigration policing—Department General Order (DGO) 5.15.<sup>7</sup> This DGO operationalizes the city's sanctuary law in the police department.

This article argues that the Chief of Police's actions to correct the behavior of officers who violate sanctuary ordinances and DGO 5.15 have been ineffective. Rather than enforcing the sanctuary law through binding, documented disciplinary action, the law has merely been reaffirmed through non-disciplinary verbal admonishment, retraining, investigation, further policy action, and a general promotion of sensitivity to the needs of immigrants. This corrective action minimally addresses the concerns of the public and targets organizational culture, fails to apply real consequences for

---

3. *Immigrant Rights Coalition Calls for Firing of SFPD Officer Caught on Video Threatening Deportation*, FREE SF (June 9, 2017), <http://freesf.org/news/2017/6/9/immigrant-rights-coalition-calls-for-firing-of-sfpd-officer-caught-on-video-threatening-deportation>.

4. S.F. DEP'T OF POLICE ACCOUNTABILITY, COMPLAINT SUMMARY REPORT 57 (Mar. 2018), available at [https://sfgov.org/dpa/sites/default/files/DPA\\_03\\_18\\_openness.pdf](https://sfgov.org/dpa/sites/default/files/DPA_03_18_openness.pdf).

5. Sara Gaiser, *Investigation Upholds Complaints Against SFPD Officer Caught Threatening Deportation on Camera*, S.F. EXAMINER (Apr. 11, 2018, 12:00 AM), <http://www.sfexaminer.com/investigation-upholds-complaints-sfpd-officer-caught-threatening-deportation-camera/>.

6. In 2016, the Office of Citizen Complaints was renamed The San Francisco Department of Police Accountability by the city's legislature, however, the main functions of the department remained almost entirely the same as a police oversight agency.

7. S.F. POLICE DEP'T, GENERAL ORDER 5.15: ENFORCEMENT OF IMMIGRATION LAWS 1 (Feb. 8, 2018) [hereinafter GENERAL ORDER 5.15], available at <https://sanfranciscopolice.org/sites/default/files/Documents/PoliceCommission/sfpd-draft-DGO-515-Enforcement-of-Immigration-Laws-dated-020818.pdf>.

2019] *Investigating and (Not) Disciplining Violations of Sanctuary City Laws* 643

police officers, and signals to them that anti-sanctuary behavior does not threaten an employee's standing in the department or ability to carry out work as usual.

## II. METHODS

To obtain documents pertaining to violations of SFPD DGO 5.15 on immigration policing, I compiled a single document composed of 14,000 pages of San Francisco resident complaints against the SFPD from 1998-2012 included in the OCC "Openness Reports" posted on the office's website.<sup>8</sup> I then conducted a keyword search for violations pertaining to DGO 5.15 and identified roughly fifty pages of all alleged and sustained complaints of violations of the DGO. In addition to a summary of the allegations of particular complaints, OCC Openness Reports include a complaint number, the date when a complaint was lodged, the type of alleged conduct logged in acronyms, and a determination of whether the allegation on alleged conduct was sustained (signified by "S" or "NS") or found to be "proper" (denoted by "PC"). Discipline meted out as a result of OCC findings is not included in these reports, so I consulted the SFPD website which posts "Chief's Decisions" reports issued by the body that oversees the department—the Police Commission—which explain what type of action the Chief took to correct the violating behavior. Officer identities are anonymous on both reports, so to identify the Police Chief's decision for corrective action on a particular violation case, I cross-referenced OCC complaint numbers provided on both the Openness Reports and on the Chief's Decision reports. However, the Police Commission removed the OCC complaint number and other information from the Chief's Decision reports after 2012 and so members of the public could thereafter not connect summaries of alleged violations and OCC findings with Chief's decisions on discipline. For this reason, the historical scope of this article ends in 2012. I further submitted public records requests to the Police Commission and the OCC for the disciplinary files for cases listed in the OCC's monthly openness reports, but was denied because officer disciplinary files are protected by state confidentiality laws.

## III. THE SAN FRANCISCO OFFICE OF CITIZEN COMPLAINTS SUSTAINED ALLEGATIONS OF NON-COMPLIANCE WITH DEPARTMENT GENERAL ORDER 5.15

In 1989, San Francisco's sanctuary city ordinance, Chapter 12H of the city's Administrative Code, was the first sanctuary city law to be passed in the United States. Prior to this time, numerous cities throughout the country had passed city resolutions as symbolic statements of values with the intent of setting the tone for city employees as to how they should interact with undocumented Guatemalan and Salvadoran refugees fleeing devastatingly

---

8. Reports for the period 2004–2012 were originally downloaded from [www.sfgov.org/occ](http://www.sfgov.org/occ) in 2015. After 2016, when the Office of Citizen Complaints was renamed the San Francisco Department of Police Accountability, all reports were migrated to the new department website at <https://sfgov.org/dpa/reports-statistics>.

violent wars that horrifically targeted non-combatant civilians in their home countries.<sup>9</sup> City and county agents were called on to refrain from inquiring about immigration status or assist the Immigration and Naturalization Service (INS) in identifying, detaining, or deporting Central American refugees who could be deported back to situations of extreme violence and even to their own deaths. Policies throughout the country had been drafted with the close assistance of the sanctuary movement's lawyers and organizers and served to publicize the plight of refugees that were arriving in urban centers and increasingly interacting with city government.

However, in 1989, four years after the San Francisco Board of Supervisors passed its symbolic sanctuary resolution titled the "City of Refuge" resolution, the refugee community, the sanctuary movement, and certain city officials in San Francisco were disheartened to find out that San Francisco police had assisted Alcohol Beverage Control officers and the INS in raiding a salsa club in a neighborhood heavily populated by Latin American immigrants and refugees.<sup>10</sup> The Board of Supervisors decided to renew and strengthen the city's sanctuary policy by transforming it from a resolution into an ordinance that would mandate department heads to develop department-specific policies which city employees would be trained in, that they would be mandated to implement, and on the basis of which they could be disciplined if they violated the policy's provisions.<sup>11</sup>

Among the law's provisions were that San Francisco city and county workers were forbidden from using government funds, resources, infrastructure, and personnel time to enforce immigration laws; to inquire about or disseminate immigration status information; to participate in investigation, detention, or arrest procedures related to immigration enforcement; to participate in surveillance activities on behalf of foreign governments; or condition local government benefits and services on the basis of immigration status unless required by law.<sup>12</sup> In 1992, the law was amended to allow for local law enforcement to report to the INS individuals who had either previously been convicted of certain crimes or who were newly convicted of certain crimes for which the law enforcement agency had arrested them.<sup>13</sup> Again in 1993, the law was further amended to allow local law enforcement officers to report individuals who had merely been arrested and booked on certain crimes regardless of whether they were found guilty of those crimes later in court and whether they had a criminal history.<sup>14</sup>

---

9. See Peter Mancina, *The Birth of a Sanctuary City: A History of Governmental Sanctuary in San Francisco*, in *SANCTUARY PRACTICES IN INTERNATIONAL PERSPECTIVES: MIGRATION, CITIZENSHIP AND SOCIAL MOVEMENTS* 205, 205–18 (Randy K. Lippert & Sean Rehaag eds., 2013).

10. See Jennifer Ridgley, *The City as a Sanctuary in the United States*, in *SANCTUARY PRACTICES IN INTERNATIONAL PERSPECTIVES: MIGRATION, CITIZENSHIP AND SOCIAL MOVEMENTS*, *supra* note 9, at 219–31; Jennifer Ridgley, *Cities of Refuge: Immigration Enforcement, Police, and the Insurgent Genealogies of Citizenship in U.S. Sanctuary Cities*, 29 *URB. GEOGRAPHY* 53, 53–77 (2008); Jennifer Ridgley, *Cities of Refuge: Citizenship, Legality, and Exception in U.S. Sanctuary Cities* (2010) (unpublished Ph.D. thesis, University of Toronto), [https://tspace.library.utoronto.ca/bitstream/1807/32948/3/ridgley\\_jennifer\\_s\\_2010june\\_PhD\\_thesis.pdf](https://tspace.library.utoronto.ca/bitstream/1807/32948/3/ridgley_jennifer_s_2010june_PhD_thesis.pdf).

11. See S.F., CAL., ADMIN. CODE ch. 12H (2016), available at <https://sfgov.org/occea/sites/default/files/Documents/SF%20Admin%20Code%2012H-12I.pdf>.

12. See *id.* at § 12H2.

13. See S.F., CAL., ORDINANCE 282-92 (Sept. 4, 1992) (codified at ADMIN. CODE ch. 12H § 2-1).

14. See S.F., CAL., AMENDING SANCTUARY ORDINANCE TO PROVIDE FOR REPORTING OF

2019] *Investigating and (Not) Disciplining Violations of Sanctuary City Laws* 645

The city intensively focused on transforming the procedures of the police and sheriff's departments, among other agencies. Over the period of 1990-1995 the police department, in consultation with the city's Human Rights Commission then led by sanctuary movement leaders appointed as HRC commissioners, developed a department-specific policy that brought the department into compliance with the citywide sanctuary ordinance.<sup>15</sup> Formal complaints of local government worker violations of the ordinance could be lodged with the city's Human Rights Commission, or if the violation was alleged to have occurred in the Police Department, complaints could also be lodged with the San Francisco OCC.

The San Francisco OCC was one of the largest civilian oversight-of-law-enforcement agencies in the United States and was created by voter initiative charter amendments in 1982, making it operational in 1983. It was placed under the direct supervision of the San Francisco Police Commission, also a civilian body, as an independent agency separate from the Police Department. The OCC investigated civilian complaints against SFPD officers and made policy recommendations to the Police Commission on SFPD policies. The OCC was staffed by a diversity of civilians who have never been San Francisco police officers, the majority of whom are investigators. However, the OCC was also composed of attorneys and support staff. The goal of the OCC was to increase public trust in law enforcement by being the bridge between the public and the police in the matters of police misconduct and police procedures. They aimed for police accountability and attempted to conduct fair, timely, and unbiased investigations. While the OCC's name sounds as if it were intended to only take complaints from citizens, it actually took complaints from all members of the San Francisco public regardless of immigration status. As a city agency, they too were bound by the restrictions of the sanctuary ordinance when interacting with residents. To accommodate individual complainants who didn't speak English, the OCC's staff spoke Cantonese, Mandarin, Burmese, Russian, and Spanish. For other languages they obtained interpretation services.

The OCC's claim process included receiving a claim of police misconduct by a complainant in person, by phone, online, or by fax. They then investigated the complainant's allegations that an officer violated department protocol by gathering evidence, conducting interviews with all involved parties and witnesses, and following the evidence trail until a determination could be made. Once the OCC completed their investigations and understood what happened, they researched whether officers violated any local, state, or federal laws. If the allegation was sustained, that is, it was found it to be credible and true that an officer violated a policy or broke a law, the OCC then sent a report for further action to the Chief of Police who could impose discipline on an officer of up to 10 days' suspension. The OCC could also recommend that the discipline or corrective action be greater than 10 days' suspension, at which point, the recommendation would be placed in

---

PERSONS IN CUSTODY FOR COMMISSION OF FELONIES 97-93-39, 36-44 (July 12, 1993); *see also* Rachel Gordon, *State Forces S.F. to Ease Sanctuary Law*, S.F. EXAMINER, July 20, 1993.

15. GENERAL ORDER 5.15, *supra* note 7.

the jurisdiction of the Police Commission to determine disciplinary action, including potentially firing the officer. In 2008, the OCC received 1021 complaints and sustained allegations in four percent of them. However, they found proper conduct in only twenty-eight percent of the allegations they investigated. Of the allegations, the largest group was for unwarranted actions followed by neglect of duty complaints at approximately twenty-seven percent of the complaints.

The OCC also ran a mediation program that allowed complaints to be resolved directly between the officer and complainant in a dispute-resolution format. The purpose was to achieve mutual understanding. The OCC partnered with community organizations and the San Francisco Bar Association, who provided neutral mediators. The mediations were conducted in languages other than English if needed, including Cantonese and Spanish. Participation in the mediation program was voluntary and both the complainant and officers were required to agree to mediate for the mediation to go forward.

The complaints that the OCC received were measured against whether the alleged police behavior violated specific department policies outlined in the Manual of Police General Orders.<sup>16</sup> Among these departmental general orders (DGOs) was DGO 5.15 “Enforcement of Immigration Laws” which was written to bring the department into compliance with the city’s sanctuary ordinance and which was part of the “Enforcement and Legal Aspects” section of the department’s *Manual*. The general orders were department policies, procedures, and rules governing conduct of SFPD sworn officers and other non-sworn employees. DGO 5.15 stated that employees of the Police Department could not attempt to enforce immigration laws or assist immigration authorities in the enforcement of immigration laws except under very limited circumstances. They could not stop, question, or detain any individual solely because of the individual’s national origin, foreign appearance, inability to speak English, or immigration status. Nor could officers ask for *documents* regarding an individual’s immigration status or assist immigration authorities in transporting individuals who’d been solely suspected of violating federal immigration laws.<sup>17</sup>

If SFPD members received requests from immigration authorities to back them up in a raid or other immigration enforcement activity, under DGO 5.15 SFPD could only do so if there were a significant danger to immigration agents or if property damage was likely. This included instances when the targets of an immigration enforcement action would likely have firearms or other weapons, the target had a history of violence, or if it was otherwise likely that immigration agents could be physically attacked. However, backup assistance could not be provided to immigration enforcement agents for routine operations or raids if these other elements were not part of the scenario.<sup>18</sup> In the case that backup assistance requests fit within these

---

16. S.F. OFFICE OF THE CONTROLLER CITY SERVS. AUDITOR, OFFICE OF CITIZEN COMPLAINTS: WEAK CASE MANAGEMENT AND ORGANIZATIONAL ISSUES DEGRADE OCC’S PERFORMANCE, AUDIT NO. 05046, at 2 (2007), available at [https://www.sfcontroller.org/ftp/uploadedfiles/controller/reports/OCC\\_012407.pdf](https://www.sfcontroller.org/ftp/uploadedfiles/controller/reports/OCC_012407.pdf).

17. GENERAL ORDER 5.15, *supra* note 7, at 1.

18. *Id.* at 2.

parameters, the request needed to first be approved by the SFPD Deputy Chief. The police officer would need to file an incident report describing the reasons for their assistance and notify their supervisor who would show up on the scene to ensure that the assistance was warranted.<sup>19</sup>

In accordance with the citywide sanctuary ordinance, DGO 5.15 did allow, however, for SFPD to inquire into immigration status, release information, or even “threaten” to release information to immigration authorities in limited circumstances. SFPD could report people to immigration authorities if they were booked on a felony charge or booked in a county jail on a lower-level charge like a misdemeanor or infraction but who also had a felony conviction on their record. The referral would not be made for all people with these kinds of charges, but only if the officer had “reason to believe that the person may not be a citizen of the United States.”<sup>20</sup> Such *belief* could not, according to the DGO, be based solely upon a person’s inability to speak English or his/her “foreign” appearance.<sup>21</sup> This vague language about reasonable belief did not set out what kind of criteria police officers would use to determine reasonable belief, nor did it mandate training for officers for making that non-final non-determination determination. Further, these bookings that triggered referral to immigration authorities were police bookings with charges set by police officers, not the re-bookings that the District Attorney’s office made after reviewing the case and determining that the DA had sufficient proof and cause to prosecute the individual in court.

The DGO had also allowed for reporting individuals to immigration authorities who had been arrested and booked on a controlled substance (drug) booking which was included in the California Health and Safety Code section 11369.<sup>22</sup> This referral could be for a felony-level controlled substance booking or for a misdemeanor drug-offense booking for a person who did not have a felony conviction on record.<sup>23</sup>

However, under no circumstances could the SFPD release information to immigration authorities if the person had been arrested or convicted for failing to obey a lawful order of a police officer during a public assembly—including a protest—or for failing to disperse after a police officer had declared an assembly to be unlawful and ordered dispersal.<sup>24</sup> If release of immigration information to immigration authorities was allowed, most of the time, it would be made by jail personnel, employees of the Sheriff’s Department, however SFPD employees assigned to the jail may have also released the information. If the release of information were to be made outside of the jail, the SFPD member would need the authorization of his or her Watch Lieutenant or other Officer-in-Charge.<sup>25</sup>

Despite all of these restrictions, the DGO allowed the SFPD to inquire about immigration status of people seeking employment with the

---

19. *Id.*

20. *Id.* at 3.

21. *Id.*

22. *Id.*; see also CAL. HEALTH & SAFETY CODE § 11369 (repealed 2018).

23. The California Trust Act, GOV. CODE §§ 7282, 7282.5(a)(1)–(3) (2014) (amended 2017).

24. GENERAL ORDER 5.15, *supra* note 7, at 1–2.

25. *Id.* at 4.

Department, as required by state and federal law. As with all DGOs, failure to comply with any provision of the DGO would subject the SFPD member to disciplinary action either by the Chief or the Police Commission.<sup>26</sup>

From June 2004 until March 2012, the OCC received 12 complaints<sup>27</sup> that police officers violated DGO 5.15, three of which were sustained. By “sustained” the OCC meant that, “[a] preponderance of the evidence proved that the conduct complained of did occur, and that using as a standard the applicable regulations of the Department, the conduct was improper.”<sup>28</sup> If the complaint were “not sustained,” the OCC meant, “[t]he investigation failed to disclose sufficient evidence to either prove, or disprove the allegation made in the complaint.”<sup>29</sup>

Other outcomes of OCC complaint investigations could be that the officer was found to have enacted “proper conduct,” where “[t]he evidence proved that the acts which provided the basis for the allegations occurred; however, such [police officer] acts were justified, lawful, and proper.”<sup>30</sup> If the OCC found that the complaint was “unfounded” it would have meant that “[t]he evidence proved that the acts alleged in the complaint did not occur, or that the named member was not involved in the acts alleged.”<sup>31</sup> More interestingly, the OCC also accounted for systemic failures of the Police Department such as a failure of SFPD policy, supervision, or training. A “policy failure” finding would mean that the evidence unearthed in an investigation proved “that the act by the member was justified by Departmental policy, procedure, or regulation; however, the OCC recommend[ed] a change in the particular policy, procedure, or regulation.”<sup>32</sup> A supervision failure referred to a finding that “the evidence proved that the action complained of was the result of inadequate supervision when viewed in light of applicable law; training; and Departmental policy and procedure.”<sup>33</sup>

Interestingly, though the OCC could rule that an allegation was “sustained” due to the officer not understanding a department policy leading the Chief to eventually issue retraining for the officer, the OCC rarely issued a finding of “training failure,” another alternative to the “sustained” finding. Training failure findings referred to when the evidence in the investigation “proved that the action complained of was the result of inadequate or inappropriate training; or a [*sic*] absence of training when viewed in light of Departmental policy and procedure.”<sup>34</sup> If the evidence proved that the action

---

26. *Id.*

27. *See Reports & Statistics*, DEP’T OF POLICE ACCOUNTABILITY, <https://sfgov.org/dpa/reports-statistics> (last visited June 2, 2019) (containing links to official reports from June 2004 through March 2012).

28. THE OFFICE OF CITIZEN COMPLAINTS, S.F. POLICE COMMISSION, 2001 ANNUAL REPORT 71 (2001) [hereinafter 2001 ANNUAL REPORT], available at <https://ia800203.us.archive.org/8/items/annualreportoffi2001sanf/annualreportoffi2001sanf.pdf>; *see, e.g.*, S.F. DEP’T OF POLICE ACCOUNTABILITY, COMPLAINT SUMMARY REPORT (Apr. 2012), available at [https://sfgov.org/dpa/sites/default/files/Documents/Office\\_of\\_Citizen\\_Complaints/OCC\\_04\\_12\\_openness.pdf](https://sfgov.org/dpa/sites/default/files/Documents/Office_of_Citizen_Complaints/OCC_04_12_openness.pdf).

29. 2001 ANNUAL REPORT, *supra* note 28, at 71.

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.*



2019] *Investigating and (Not) Disciplining Violations of Sanctuary City Laws* 649

complained of did not involve a sworn member of the Department; or that the action described was “so obviously imaginary that their occurrence is not admissible by any competent authority,” the OCC would issue a finding of “information only.”<sup>35</sup> Information only allegations were not counted as complaints against “sworn members” of the Department—officers who had undergone police academy training and had the authority to make arrests, among other police officer activities. Complaints against non-sworn employees of the Department—civilian staff such as administrative assistants and counselors—were referred to the Management Control Division. Complaints against employees of other city departments and agencies, were referred to the appropriate agency. Finally, if the complainant failed to provide additional requested evidence, or the complainant requested a withdrawal of the complaint, the OCC would issue a finding of “no finding” for the complaint.<sup>36</sup>

The following cases illustrate how discrimination against Latinos and anti-sanctuary police action are intricately intertwined in San Francisco despite the city’s sanctuary law and the Police Department’s general order on immigration enforcement.

#### A. THE NEWS DELIVERY MAN AND HIS EMPLOYEE

The first sustained complaint lodged with the OCC against a police officer for a violation of DGO 5.15 occurred on June 16, 2004.<sup>37</sup> It took the OCC six months to complete the investigation and issue a finding. In the complaint, the complainant, an owner of a newspaper delivery van who had been seemingly unjustifiably stopped by a police officer, alleged first that the officer was rude in tone and manner to him and his employee, who was a passenger in the vehicle—a form of conduct that the OCC categorized as “discourtesy”. Discourtesy was defined by the OCC as “[b]ehavior or language commonly known to cause offense, including the use of profanity.”<sup>38</sup> The complainant stated to the OCC that during the traffic stop, he asked the SFPD officer who stopped him what he had done wrong. The officer did not answer his question and, according to the complainant, was rude. The passenger serving as a witness to the allegation stated to the OCC that the officer made a comment but that it was made in a normal tone of voice and the officer denied being rude.<sup>39</sup> The OCC could not determine whether the allegation that the officer was rude was true and, therefore, the allegation was not sustained.<sup>40</sup>

The complainant also alleged that the officer conducted an unjustified pat-down of his employee—a form of conduct the OCC considered

---

35. *Id.*

36. *Id.*

37. S.F. DEP’T OF POLICE ACCOUNTABILITY, COMPLAINT SUMMARY REPORT 26 (Jan. 2005) [hereinafter COMPLAINT SUMMARY REPORT JAN. 2005], available at [https://sfgov.org/dpa/ftp/uploadedfiles/occ/OCC\\_01\\_05\\_openness.pdf](https://sfgov.org/dpa/ftp/uploadedfiles/occ/OCC_01_05_openness.pdf). The Report is not paginated as it is a compilation of all complaints against officers for the given period. That said, for reference purposes I will cite to the page number found on the PDF’s navigation pane as if the Report were paginated.

38. 2001 ANNUAL REPORT, *supra* note 28, at 71.

39. COMPLAINT SUMMARY REPORT JAN. 2005, *supra* note 37, at 26.

40. *Id.*

“unwarranted action.”<sup>41</sup> Unwarranted action was defined by the OCC as “[a]n act or action not necessitated by circumstances or which does not effect [sic] a legitimate police purpose.”<sup>42</sup> The complainant was the sole driver of the vehicle and his employee who was a passenger was assigned to make deliveries of newspaper bundles on foot. The officer made an incorrect assumption when he accused the passenger of being the driver and of switching seats with the driver. Another witness, an employee at a nearby store, corroborated that the passenger of the vehicle delivered a bundle of newspapers to his business on foot during the period of time that the passenger was alleged to have been driving. Based on this false assumption, the SFPD officer requested the passenger’s identification. When the passenger had none, the officer ordered the passenger out of the vehicle and conducted a pat search of him for “officer safety reasons” and to assure that the passenger had no weapons.<sup>43</sup> The officer did not have reasonable suspicion to pat search the passenger because the complainant had already produced a valid California Driver’s License. The OCC found that, “a preponderance of the evidence establishes that the officer’s claim that the passenger had switched seats after he had been the driver is false,” and the allegation that the pat-down was unjustified was sustained by the OCC.<sup>44</sup>

The complainant made a third allegation that the officer cited his employee without cause—also an “unwarranted action.” The complainant and the witness from a store where the employee delivered the papers stated the officer unjustly cited the passenger of the vehicle for Vehicle Code violations when he was not driving. The officer denied the allegation when questioned by the OCC. The OCC found that “[a] preponderance of the evidence establishes that the officer cited the wrong party. The allegation is sustained.”<sup>45</sup>

The complainant also alleged that the officer towed the complainant’s van without cause. The officer denied the allegation stating that he towed the complainant’s van because he believed the passenger, who did not have a driver’s license, was behind the wheel. The complainant stated that the officer’s belief was erroneous, that he was the sole driver of the vehicle, and he had a valid driver’s license. The passenger corroborated the complainant’s version of events. The OCC found that “[a] preponderance of the evidence established that the sole driver of the van was the complainant. He had a valid license. The tow was improper. The allegation is sustained.”<sup>46</sup> Tied to this allegation was an additional allegation that the officer “misused his police authority by responding in a discriminating manner.”<sup>47</sup> This would be considered by the OCC in the category of “conduct reflecting discredit.” The OCC defined conduct reflecting discredit to be “an act or action which, by its nature, reflects badly on the Department and undermines public confidence.”<sup>48</sup> The complainant viewed the officer’s choice to claim that his

---

41. *Id.*

42. 2001 ANNUAL REPORT, *supra* note 28, at 71.

43. COMPLAINT SUMMARY REPORT JAN. 2005, *supra* note 37, at 26.

44. *Id.*

45. *Id.* at 27.

46. *Id.* at 27.

47. *Id.* at 28.

48. 2001 ANNUAL REPORT, *supra* note 28, at 71.

2019] *Investigating and (Not) Disciplining Violations of Sanctuary City Laws* 651

passenger was the real driver, to claim that he switched seats because he had no driver's license, to cite his passenger despite the driver having a valid California license, and to tow his van leading to impoundment of the vehicle was based on the complainant's and the passenger's ethnicity. The OCC found that, "The witness corroborated this complaint, however, there is insufficient evidence to prove or disprove why the officer responded in this manner."<sup>49</sup>

The complainant lodged an allegation categorized by the OCC as "conduct reflecting discredit"—that in the exchange, the officer "questioned the passenger regarding his immigration status without justification."<sup>50</sup> The OCC found that during the course of the traffic stop the officer did in fact ask the passenger about his immigration status. According to the OCC report, "[t]he officer admitted that he asked for the passenger's immigration status because it was relevant to the retrieval of the towed vehicle."<sup>51</sup> The OCC correctly stated that the officer's questioning of the immigration status of the passenger violated DGO 5.15. 1.B.4, which stated, "A member [of the SFPD] shall not inquire into an individual's immigration status . . . ."<sup>52</sup> The context in which he asked the question was not included in the traffic stop information sheet officers use, and "was irrelevant to the retrieval of the vehicle. The allegation is sustained."<sup>53</sup>

Three months after the OCC issued sustained findings on this OCC complaint, on April 20, 2005, SFPD Chief Heather Fong issued a decision to "admonish" the officer and close the case file.<sup>54</sup> According to DGO 2.07, "Discipline for Sworn Officers," an admonishment is "an advisory, corrective, or instructional action by a superior which does not constitute formal discipline. It is a warning only and not a punitive action."<sup>55</sup> Admonishment was essentially a slap-on-the-wrist, non-discipline discipline which is not even a written "reprimand," a formal written punitive action "which shall be noted or included in a member's personnel file. A subsequent violation of a similar nature invites more serious punitive action."<sup>56</sup>

From least to most severe—the Chief can issue an admonishment, a written reprimand, suspend up to 10 days, or refer to the Police Commission to suspend over 10 days or to terminate the employee. The Chief could also prescribe corrective action such as retraining, find the action to not be sustained, or even exonerate the officer. A suspension is "time off without pay" imposed after a hearing, not counted toward the officer's retirement, with a record of the suspension included in the officer's personnel file.<sup>57</sup> If the suspension were a "Chief's Disciplinary Suspension," the suspension

---

49. COMPLAINT SUMMARY REPORT JAN. 2005, *supra* note 37, at 28.

50. *Id.*

51. *Id.*

52. GENERAL ORDER 5.15, *supra* note 7, at 1.

53. COMPLAINT SUMMARY REPORT JAN. 2005, *supra* note 37, at 28.

54. S.F. POLICE DEP'T, OCC SUSTAINED COMPLAINTS (Apr. 20, 2005).

55. S.F. POLICE DEP'T, GENERAL ORDER 2.07: DISCIPLINE PROCESS FOR SWORN OFFICERS 1 (July 20, 1994), <https://www.sanfranciscopolice.org/sites/default/files/2018-11/DGO2.07%20Discipline%20Process%20for%20Sworn%20Officers.pdf>.

56. *Id.*

57. *Id.*

would follow an investigation and a recommendation from the OCC or unit within the Department and the officer would have a hearing with the ability to appeal the suspension at the Police Commission. This Chief issued admonishments or retraining for most cases. Issuing admonishments and retrainings to an officer was a manner for the Chief to allow a commanding officer of the officer who violated a policy or regulation to dispose of the officer's "minor violation."<sup>58</sup>

As we can see in this case of the newspaper van driver and his employee, this SFPD disciplinary system allowed for an officer to humiliate an immigrant without an ID in violation of the Department's general order and in violation of the sanctuary ordinance, tow a vehicle leading the driver to pay fines to release it from impoundment, and escape any discipline following a formal investigation. The then publicly immigrant-friendly Chief Heather Fong took no punitive action—not even a written document placed in his personnel file or a call for retraining in DGO 5.15.

#### B. THE WOMAN WHO SOUGHT HELP FROM THE POLICE TO ENFORCE A RESTRAINING ORDER

At the end of December 2004, a complainant filed a complaint with the OCC after going into a police station for help with harassing phone calls from a person against whom she had obtained a civil harassment order.<sup>59</sup> She believed that the restraining order had not been appropriately filed by the SFPD and no action had been taken on it. The OCC investigation established that an officer helping the woman made a computer inquiry in a federal criminal database, using the "usual format," in an attempt to locate the restraining order to assist the complainant.<sup>60</sup> The officer received a "federal advisement" for the woman in return to his query—a *civil* immigration warrant that immigration authorities had placed on her file in the *criminal* database that the officer searched. The officer directed that the complainant be arrested. The warrant was not criminal in nature or issued by any court and, therefore, outside of the jurisdiction of the local police. The civil immigration warrant the officer found was essentially was a non-mandatory request from immigration authorities for assistance to local law enforcement. By federal law, immigration authorities cannot compel state or local law enforcement from cooperating in civil immigration enforcement. The arresting officer, according to the complainant, made inappropriate remarks and used "language meant to belittle" the complainant.<sup>61</sup> Also according to the complainant, the officer failed to read her the Miranda advisement on her rights but a number of officers asked her questions about her immigration

---

58. *Id.* at 2.

59. S.F. DEP'T OF POLICE ACCOUNTABILITY, COMPLAINT SUMMARY REPORT 14 (Nov. 2005) [hereinafter COMPLAINT SUMMARY REPORT NOV. 2005], available at [https://sfgov.org/dpa/ftp/uploadedfiles/occ/OCC\\_11\\_05\\_openness.pdf](https://sfgov.org/dpa/ftp/uploadedfiles/occ/OCC_11_05_openness.pdf). The Report is not paginated as it is a compilation of all complaints against officers for the given period. That said, for reference purposes I will cite to the page number found on the PDF's navigation pane as if the Report were paginated.

60. *Id.*

61. *Id.*

2019] *Investigating and (Not) Disciplining Violations of Sanctuary City Laws* 653

situation when she was brought into the station. The arresting officer then towed and impounded her vehicle.<sup>62</sup>

The investigation of the OCC complaint and its allegations lasted eleven months with a final findings report issued in November of 2005. The OCC investigation established that while the arresting officer followed appropriate protocols in using the station computer system and queried the appropriate database, the arresting officer directed that the complainant be arrested in violation of the city's sanctuary ordinance and SFPD General Order 5.15. The OCC found that "[s]ince the investigation determined that the criminal exceptions [of DGO 5.15] did not apply and that there was no court-ordered warrant outstanding, the officer, by arresting the complainant, was not in compliance with Department regulations, and the allegation [that the arrest was unwarranted] is therefore sustained."<sup>63</sup> This would be considered an "unwarranted action" by the OCC.<sup>64</sup> This same action would be considered by OCC for a second violation, in addition to the sustained "unwarranted arrest" allegation as a sustained allegation that the SFPD "failed to comply with the SFPD policy regarding the enforcement of immigration laws."<sup>65</sup> This second sustained allegation was considered a "neglect of duty," which is a "failure to take action when some action is required under the applicable laws and regulations."<sup>66</sup> The complainant's allegation that the officer towed her vehicle without justification due to the unjust arrest was also sustained.<sup>67</sup>

Contrary to the complainants belief that the SFPD did not take appropriate action in filing the restraining order and documenting the harassment, "[t]he investigation established that the officer assisting the complainant did, in fact, make a written report of the complainant's harassment and did what was required under the circumstances."<sup>68</sup> Accordingly, the OCC issued a finding of "proper conduct" for this allegation of "neglect of duty."<sup>69</sup> Further, the complainant's allegations that the officer made insulting comments, that her Miranda rights were not read to her, and that the officers asked her information about her immigration situation once she was arrested—all "conduct reflecting discredit" allegations—were not sustained. This was because the OCC found that "[n]one of the officers known to be in the station at the time said that they made the comments or questions or heard them being made. There were no independent witnesses."<sup>70</sup>

In January 2006, two months after the OCC findings were issued, Chief Fong made a decision to "retrain" the officer and then closed the disciplinary file.<sup>71</sup> While the disciplinary outcome of this case was slightly better in that it called for retraining, retraining was not considered punitive, and the

---

62. *Id.* at 16.

63. *Id.* at 15.

64. *See* 2001 ANNUAL REPORT, *supra* note 28.

65. COMPLAINT SUMMARY REPORT NOV. 2005, *supra* note 59, at 15.

66. 2001 ANNUAL REPORT, *supra* note 28.

67. COMPLAINT SUMMARY REPORT NOV. 2005, *supra* note 59, at 16.

68. *Id.* at 14.

69. *Id.*

70. *Id.* at 15.

71. *See* S.F. POLICE DEP'T, OCC SUSTAINED COMPLAINTS (Jan. 18, 2006).

retraining disposed of the officer's charge of misconduct and would not be placed in the officer's personnel file. All the while, a victim of harassment who was seeking police assistance was forced to deal with the trauma of being placed in immigration detention and deportation proceedings.

### C. THE MAN WHO MADE A "CALIFORNIA ROLLING-STOP"

A sustained allegation of an officer violating DGO 5.15 would not come for another five years, when a complaint including sixteen allegations was filed with the OCC on June 8, 2010.<sup>72</sup> The complainant was driving his vehicle with a passenger at an intersection with a stop sign. The complainant alleged that he made a complete stop at the stop sign, but he was stopped by police officers who claimed he failed to make a complete stop before the stop sign. They claimed that he drove through the intersection "at approximately fifteen to twenty miles per hour without stopping."<sup>73</sup> His passenger corroborated the story of the police officers, that he rolled through the stop sign. While "[t]he complainant alleged the officers engaged in biased policing and stopped him due to his ethnicity," the officers maintained that they conducted the stop because he drove through an intersection without stopping and "denied knowing the ethnicity or national origin of the driver prior to the traffic stop."<sup>74</sup> The passenger corroborated the police's story stating that "the officers could not see the complainant inside the vehicle until after the traffic stop and assumed the complainant was stopped for failure to stop completely at a stop sign."<sup>75</sup> The driver did not have his license or any other identification, and asked to walk to his home with the officers and show them an identification card to avoid arrest. The officers stated to the OCC that "the complainant was required to have a government issued identification on him at the time of the traffic stop and allowing him to leave the scene was a safety issue." DGO 5.06 mandates that when a person is arrested for a misdemeanor and does not provide satisfactory evidence of his/her identity, a custodial arrest is warranted rather than a citation release.<sup>76</sup> Consistent with this policy, the officers decided to place the driver under custodial arrest, handcuff him, place him in their patrol car, and transport him to the station for identification. The complainant claimed that he asked both officers who arrested him about the reason for his custodial arrest but no explanation was given. Further, he stated that the officers "laughed and mocked him while placing him under arrest."<sup>77</sup> The officers stated to the OCC that they informed the complainant he was under arrest for driving

---

72. S.F. DEP'T OF POLICE ACCOUNTABILITY, COMPLAINT SUMMARY REPORT 58 (May 2011) [hereinafter COMPLAINT SUMMARY REPORT MAY 2011], available at [https://sfgov.org/dpa/sites/default/files/Documents/Office\\_of\\_Citizen\\_Complaints/OCC\\_05\\_11\\_openness.pdf](https://sfgov.org/dpa/sites/default/files/Documents/Office_of_Citizen_Complaints/OCC_05_11_openness.pdf). The Report is not paginated as it is a compilation of all complaints against officers for the given period. That said, for reference purposes I will cite to the page number found on the PDF's navigation pane as if the Report were paginated.

73. *Id.*

74. *Id.*

75. *Id.* at 61.

76. *See id.*

77. *Id.* at 60.

2019] *Investigating and (Not) Disciplining Violations of Sanctuary City Laws* 655

without a driver's license or any identification in his possession. The passenger inside the car could neither verify nor deny the allegation.<sup>78</sup>

Back at the station, in the process of running a background check on the driver, the officers used the same federal criminal database as the officers in the previous case of the woman seeking assistance with enforcing a restraining order. In response to their query about the driver, the officers noticed that Immigration and Customs Enforcement (ICE) had placed the same type of administrative civil immigration warrant in the database for the driver. A subordinate officer to the arresting officer then made a phone call to ICE to "verify the existence of an administrative warrant."<sup>79</sup> The individual was booked on two misdemeanor traffic violations and had no felony-level convictions or controlled substance violations on his record, and no court-ordered warrants outstanding for his arrest. Following the phone call, the officer asked the complainant questions about his immigration status, and released his information to ICE.<sup>80</sup> The OCC investigation established that prior to making the call, the subordinate officer who made the call approached the more senior arresting officer with a generic question about booking a subject for an immigration warrant, but the more senior arresting officer denied approval to contact ICE. While "[t]here were conflicting statements among sworn members regarding the question and what the answer given meant," and "[a] purported witness on scene could not recall this incident to either prove or disprove the allegation."<sup>81</sup>

The complainant alleged that the officers detained him without justification, an "unwarranted action" form of conduct. The OCC ruled that the officers performed "proper conduct" since driving through the stop sign without stopping was the reason for detaining the driver.<sup>82</sup> The complainant's allegation that the police engaged in biased policing due to his ethnicity—an allegation of "conduct reflecting discredit"—could not be proven or disproven by the OCC, so the OCC issued a "not sustained" finding.<sup>83</sup> According to the police and the passenger, the original stop was made because the driver rolled through the stop, and the driver was arrested for not having identification. The OCC also found that while the communication at the station between one of the officers and ICE "to verify the existence of an administrative warrant violated both Department General Order 5.15 and San Francisco Administrative Code section 12H1, there [was] insufficient evidence to prove or disprove that the officers' policing actions at the station were biased."<sup>84</sup>

The complainant's allegation that the more senior arresting officer violated DGO 5.15 was not sustained due to his contention that he was only "peripherally aware of an unauthorized contact by his [subordinate] partner with [ICE] in violation of DGO 5.15."<sup>85</sup> The OCC found that the "totality of

---

78. *Id.*

79. *Id.* at 58.

80. *Id.* at 59.

81. *Id.* at 62.

82. *Id.* at 58.

83. *Id.*

84. *Id.*

85. *Id.* at 59.

statements from several members during this investigation was insufficient to reach a preponderance of the evidence to either prove or disprove the allegation against the [senior] officer.”<sup>86</sup>

However, the OCC sustained the allegation that the officer who made the call to immigration authorities failed to comply with DGO 5.15. The OCC found that:

The investigation established that the complainant had no prior felony conviction and was booked by SFPD for two traffic misdemeanors . . . [It] also established that there was no outstanding warrant issued by any court but only an [ICE] request for assistance. A preponderance of the evidence, including the officer’s own testimony, established that his calls to ICE were unauthorized, and in violation of SFPD General Orders prohibiting cooperation with the federal immigration agency’s enforcement actions and in violation of the San Francisco Administrative “City of Refuge” Code provisions.<sup>87</sup>

Even further, the complainant was not arrested for any offenses that would trigger the criminal exceptions. The OCC concluded that “the officer, by contacting ICE, asking questions from the arrestee, and releasing such information to ICE, was not in compliance with Department regulations.”<sup>88</sup>

As in the previous case of the woman arrested in the process of seeking police help on a restraining order, the form of conduct in violation of DGO 5.15 was considered by the OCC as “neglect of duty”—neglecting to abide by DGO 5.15.<sup>89</sup> Since witnesses could not confirm whether the subordinate officer asked the more senior officer for his approval to call ICE, the story could not be proven, and the complainant’s allegations that the senior officer “failed to properly supervise” were not sustained by the OCC.<sup>90</sup> And because the passenger could not recall these incidents, the OCC could not determine whether the officers’ behavior and comments were inappropriate when arresting the driver, or whether they failed to inform him of why he was being arrested. The OCC found the custodial arrest and transport to the station to be “proper conduct.”<sup>91</sup>

The Chief’s decision on discipline in this case was issued after September 2012 and, therefore, cannot be known.

#### IV. THE POLICY FAILURE OF DGO 5.15

In February 2007 a complaint lodged with the OCC led to a different type of finding—rather than issuing a “sustained,” “not-sustained,” or “proper conduct” finding, the OCC found that the scenario pointed to in the

---

86. *Id.*

87. *Id.*

88. *Id.*

89. Compare COMPLAINT SUMMARY REPORT NOV. 2005, *supra* note 59, at 16, with COMPLAINT SUMMARY REPORT MAY 2011, *supra* note 72, at 62.

90. *Id.* at 62.

91. *Id.* at 60.



2019] *Investigating and (Not) Disciplining Violations of Sanctuary City Laws* 657

complaint amounted to an instance of “policy failure.”<sup>92</sup> Following the police arrest of two individuals during an ICE operation that involved the SFPD’s participation, the two individuals were placed in deportation proceedings. A complainant met with an SFPD officer to ask the officer to look into the arrests of the two individuals who subsequently became his clients who he was defending in immigration court. According to the complainant’s statement, “The officer offered to receive and forward an OCC complaint during [the] meeting, but during a subsequent telephone conversation refused to receive or assist to forward his complaint to the [OCC].”<sup>93</sup> During the OCC investigation, the officer denied that the complainant made that request. The officer also stated that “it was the officer’s understanding that the purpose of the meeting was to discuss the department’s policy regarding undocumented residents.”<sup>94</sup> The officer claimed that he asked the complainant if he wanted to lodge an OCC complaint about the matter, but that the complainant replied “no” and that he “would get back to us.”<sup>95</sup> The complainant alleged that “the officer failed to take required action for failure to take a citizen’s complaint of misconduct and failure to investigate a violation of DGO 5.15.”<sup>96</sup> The OCC report states that “[w]itnesses at the meeting gave conflicting statements regarding the purpose of the meeting and whether the complainant stated explicitly or by inference that he was making a formal complaint of police misconduct. There was insufficient evidence to either prove or disprove the allegation.”<sup>97</sup> This allegation of “neglect of duty” was not sustained.

The officer named in the complaint was one of the officers involved in assisting ICE during the joint operation, which led to the arrest and subsequent placement of the individuals in deportation proceedings. The complainant alleged that due to this fact, the officer violated DGO 5.15. However, the OCC found that the evidence indicated that the named officer “acted in accordance with a Departmental approval to participate in the joint operation with the [ICE].”<sup>98</sup> The OCC found that SFPD officers, ICE, California Department of Justice special agents, and Bureau of Narcotics Enforcement agents “participated in a joint operation to target members of the criminal street gang “Sureños 13” and Mara Salvatrucha (MS-13) over the course of three days during the spring of 2005.”<sup>99</sup> The ICE Enforcement Action Plan identified by the OCC in its investigation, the operation’s objectives were to:

---

92. S.F. DEP’T OF POLICE ACCOUNTABILITY, COMPLAINT SUMMARY REPORT 24–25 (Mar. 2008) [hereinafter COMPLAINT SUMMARY REPORT MAR. 2008], available at [https://sfgov.org/dpa/ftp/uploadedfiles/occ/OCC\\_03\\_08\\_openness.pdf](https://sfgov.org/dpa/ftp/uploadedfiles/occ/OCC_03_08_openness.pdf). The Report is not paginated as it is a compilation of all complaints against officers for the given period. That said, for reference purposes I will cite to the page number found on the PDF’s navigation pane as if the Report were paginated.

93. *Id.* at 24.

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *Id.* at 25.

99. *Id.*

1) establish surveillance at target intersections; 2) observe and identify criminal street gang members and associates; 3) apprehend and arrest subjects engaged in suspected criminal activities including counterfeit identification document sales and illicit narcotics distribution; 4) assist San Francisco County Probation with warrantless probation searches on eligible probation targets; 5) affect targets in violation of location specific stay away orders; and 6) gather gang related intelligence for analysis and further enforcement action.<sup>100</sup>

The plan's third objective also included that "ICE agents will identify subjects eligible for felony 1326 Re-entry after Deportation prosecutions."<sup>101</sup> Such prosecutions fall under federal immigration law, specifically 8 U.S.C. § 1326.<sup>102</sup> The OCC found that while "SFPD officers requested and obtained written approval to participate in the joint operation with ICE," it was restricted to "target[ing] identified gang members engaged in illegal activity."<sup>103</sup> SFPD officers also received approval from their superiors "to provide ICE a list of active gang members with reportedly prior felony convictions."<sup>104</sup> The OCC investigation found ICE and SFPD officers rode around the neighborhood together to point out specific areas and individuals of interest. Subsequently, SFPD and ICE together surveilled, "local gang members and arrested individuals for criminal violations involving stay away orders and narcotics offenses."<sup>105</sup> The evidence found in the OCC investigation "did not indicate that those arrested by SFPD were subsequently turned over to ICE."<sup>106</sup> However, ICE agents arrested the complainant's two clients during the joint operation, "questioned them about their gang affiliation, and completed a Record of Deportable/Inadmissible Alien on each."<sup>107</sup> The narrative, which requests "an outline of particulars under which the alien was located/apprehended," did not include any observations that the two arrested individuals were involved in criminal activities.<sup>108</sup> Those arrestees underwent deportation proceedings, but "[n]either individual was named on the list of active gang members with prior felony convictions that SFPD provided to ICE."<sup>109</sup>

Since SFPD members received authorization to participate in a joint operation with ICE agents "to target identified gang members engaged in illegal activity," but one of the operation's objectives was for ICE agents to identify subjects not engaged in criminal activity, i.e., subjects merely eligible for prosecution under federal immigration laws, the OCC determined this presented a new scenario where the police role in immigration enforcement was murky.<sup>110</sup> The OCC found that:

---

100. *Id.*

101. *Id.*

102. 8 U.S.C. § 1326 (1996); see COMPLAINT SUMMARY REPORT MAR. 2008, *supra* note 92, at 25.

103. See COMPLAINT SUMMARY REPORT MAR. 2008, *supra* note 92, at 25.

104. *Id.* at 26.

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.*

2019] *Investigating and (Not) Disciplining Violations of Sanctuary City Laws* 659

To ensure strict compliance with DGO 5.15 and increase transparency and accountability, the OCC recommends that DGO 5.15 be revised to include provisions that clarify whether SFPD may engage in joint operations with ICE that target both criminal activity and immigration enforcement and require the Police Chief to provide a written report to the Police Commission that identifies all joint operations, assistance and information provided to ICE, and the manner in which such operations, assistance and release of information comply with DGO 5.15. Therefore, the evidence indicates that the act occurred but that ambiguity in the Department General Order constitutes a Policy Failure.<sup>111</sup>

According to the Chief's Decision reports, the OCC finding that there was a failure of DGO 5.15 policy that needed reform never came to the Chief for a decision, literally falling into a policy black hole.

## V. CONCLUSION

In light of the roughly 1000 OCC complaints per year, a total of twelve complaints of violations of DGO 5.15 with only three being sustained over an eight year period seems insignificant. However, these cases represented only those instances when immigrants knew about the OCC and their complaint process, knew that they could register complaints as an undocumented resident, were not afraid of interacting with city government that had just violated their rights or potentially placed them in deportation proceedings, who were in most cases assisted by an immigrant serving organization, and who did not seek help from another city agency such as the Immigrant Rights Commission, their District Supervisor, or other local official whom they may have had a prior contact with. Further, given the disciplinary outcomes of OCC investigations, which ended in officer misconduct being discharged and never registered in their personnel files, immigrants and their advocates might have just given up on the process all together as a waste of time. As with all laws and policies, they are only as effective as they are enforced.

This article explored the power of the San Francisco OCC to investigate and assist city departments in bringing city employee practices that are out of compliance with the sanctuary ordinance into compliance. This power however, is restricted to conducting investigations, making recommendations, and providing assistance and support in re-training staff. It does not effectively mandate department heads who are appointees of the Mayor and who are in most cases responsible for discipline, such as the Chief of Police, to take corrective action recommended by this investigatory agency. Nor does the OCC have the ability to direct the City Attorney to take legal action against offending agencies. Admittedly, the symbolic power of OCC findings of non-compliance may lead to some form of action. However, it is apparent that this power has not effectively assured all residents—

---

111. *Id.*

regardless of immigration status—that San Francisco goes beyond pro-immigrant public pronouncements about protecting immigrants from deportation to actually enforce its existing sanctuary laws through effective disciplinary deterrence. Non-documented, non-disciplinary verbal admonishment and retraining is simply not enough; city employee behavior in violation of the city’s sanctuary policies continues.

To effect real implementation of these laws and department policies, the Mayor; City Attorney; department heads, including the Chief of Police; and department oversight commissions need to consider the real effect that local city employee cooperation with immigration authorities has upon immigrant residents and their communities when they are threatened with or subject to deportation. To take this more seriously, comprehensive and publicly transparent action plans that are registered as documented discipline with a real effect upon the tenure of city worker employment must be established, as well as comprehensive, periodically repeated trainings conducted in consultation with immigrant advocacy groups. These groups understand how immigrants fear and distrust city employees and how they might come to respect them and work with them if sanctuary city procedures were adhered to.