



May 15, 2017

**VIA CERTIFIED MAIL
AND ELECTRONIC MAIL**

Chair Max J. Sword, Vice Chair Cha Thompson,
Commissioner Luella T. Costales, Commissioner Eddie Flores, Jr.,
Commissioner Steven H. Levinson, Commissioner Loretta Sheehan,
Commissioner Mark C. Tilker
c/o Executive Officer
Honolulu Police Commission
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Re: Ten Questions for the Next Chief of Police

Dear Chair Sword, Vice Chair Thompson, and Honolulu Police Commissioners,

The appointment of a new chief of police marks a turning point in the City and County of Honolulu as it is a unique opportunity for the leadership of the Honolulu police to regain the trust of the people they serve. In turn, nothing will determine such trust more than the next chief's commitment to civil rights and civil liberties. For this reason and to aid the Commission in making this important decision, we are writing to request that you pose ten questions about civil liberties to all candidates for the position of police chief. The answers to these questions will hopefully not only inform the Commission's decision making, but perhaps more importantly, will also define the department's relationship to the public moving forward.

In creating the police department, the Charter for the City and County of Honolulu establishes "a system of law enforcement which shall be based on due regard for the constitutional rights of all persons, which shall promote the highest possible degree of mutual respect between law enforcement officers and the people of the city and which shall provide for the expeditious apprehension of those who violate the law." Revised Charter of the City & County of Honolulu (the "*Charter*") § 6-1602. Thus, the Charter explicitly provides that purpose of the department is not just, or even primarily, to judiciously enforce the law, but to do so with due regard for constitutional rights and respect for the people of Honolulu.

The chief of police is the administrative head of the police department and as such, is tasked with carrying out the Charter's mission of preserving public peace while respecting the public's constitutional rights. Neither the Charter nor the Revised Ordinances of Honolulu lay

out with any specificity how the chief of police must carry out these goals, leaving the promulgation of rules and regulations, and the training, supervision, and appointment of personnel primarily to the chief of police. Charter § 6-1604. Given that the police department has almost exclusive authority and discretion on the lawful use of force in Oahu, carrying out these duties is an awesome responsibility that no chief of police should take lightly.

The general public in Honolulu does not have a direct say in selecting the chief of police. Instead, as an added layer of independence, this responsibility rests with your Commission, which can appoint and remove the chief of police for any reason. Charter § 6-1603. In traditional legal terms, this means that the chief of police serves at your pleasure and that you are ultimately responsible for ensuring, on behalf of the public, that the chief of police is properly carrying out the department's mission of maintaining the peace *and* respecting the constitutional rights of the people of the City and County of Honolulu.

As our community faces enduring and new challenges, the role of the new chief of police in helping or hurting each individual's fundamental rights under the Hawai'i and United States constitutions cannot be overstated. The new chief will need to ensure that the people's right of free speech and the right to protest are respected. The new chief will also play a key role in guaranteeing the rights to due process, counsel, remain silent, and being secure against unreasonable searches and seizures. As military-grade equipment and more intrusive surveillance tools become available, the new chief will decide whether and how the police department should use these tools. Similarly, as police body camera programs are adopted, the chief will decide on the final procedures and rules that will ensure both transparency and accountability. The new chief of police will also need to decide whether and to what extent the police department will cooperate with the Trump administration's priorities, such as drug and immigration enforcement, to the detriment of local priorities, such as community policing, law enforcement assisted diversion, and drug treatment. Finally, the new chief of police will set the culture and enforcement priorities of the department and, thus, ultimately be either part of the problem or the solution in addressing prison overcrowding and the overrepresentation of Native Hawaiians, the homeless, the poor, and other minorities in our correctional system.

For these reasons, the appointment of a new chief of police is a powerful moment for rebuilding the trust in the police department's leadership and mission. To ensure the next chief of police understands and is committed to respecting civil rights, we ask that the Commission pose the following ten questions to all candidates for the position:

- 1) Are you committed to guaranteeing the right of free speech and to protest by issuing strong policies, training law enforcement, creating meaningful oversight, and holding officers accountable so that the police will not interfere with these rights in public places, never engage in mass arrests, not use surveillance technology on protesters, not use military-grade equipment to control crowds, respect the public's right to record the police, and generally de-escalate tensions between protesters and the police?

- 2) Are you committed to adopting and implementing 21st century policing practices¹ and Police Executive Research Forum policies,² including minimal force de-escalation tactics and diversion programs such as law enforcement assisted diversion?³
- 3) Are you committed to adopting policies and mandatory training to ensure that no official will interrogate, arrest, surveil, detain or take other law enforcement action against an individual based solely or primarily upon that individual's perceived race, national origin, ethnicity, religion, sex, sexual orientation, gender, gender expression, language, wealth, homelessness, or immigration status?
- 4) Are you committed to being part of the solution to end mass incarceration and overcrowding in Oahu's jails and prisons by strongly supporting smart justice initiatives that reduce incarceration, improve the conditions of confinement, focus on rehabilitation, and reduce recidivism?
- 5) Are you committed to the police department not getting involved in federal immigration enforcement, including not honoring ICE detainees, not participating in the 287(g) program, and otherwise avoiding any and all engagement in federal immigration enforcement?
- 6) Are you committed to having the City and County Council decide through an open, transparent, and well-informed process with meaningful public input whether and how surveillance technologies should be funded, acquired, and used by the police?
- 7) Are you committed to guaranteeing the rights to due process, counsel, remain silent, and being secure against unreasonable searches and seizures by issuing strong policies, training law enforcement, creating meaningful oversight, and holding officers accountable so that the police will not stop someone without reasonable suspicion or arrest someone without probable cause, search a person and his or her property without a warrant, whenever such warrant is required, fail to inform someone of his or her Miranda rights, be honest and truthful in court, follow proper procedures in taking law enforcement actions, and turn over exculpatory evidence to the prosecuting attorneys so that it can be disclosed to the defense?
- 8) Are you committed to curbing the excessive militarization of the police force by imposing meaningful restraints and adopting best practices on the use of SWAT and similar tactical teams and ensuring that there is civilian oversight over the acquisition of military style weapons and vehicles?

¹ In December, 2014, President Barack Obama established the Task Force on 21st Century Policing. The task force was charged with identifying best practices and offering recommendations on how policing practices can promote effective crime reduction while building public trust. In May 2015, the task force issued a comprehensive report identifying several recommendations, each with action items, organized around six main topic areas or "pillars:" Building Trust and Legitimacy, Policy and Oversight, Technology and Social Media, Community Policing and Crime Reduction, Officer Training and Education, and Officer Safety and Wellness. *See Final Report of the Obama administration's Task Force on 21st Century Policing, available at*

https://cops.usdoj.gov/pdf/taskforce/taskforce_finalreport.pdf

² See Police Executive Research Forum, Guiding Principles on Use of Force, *available at* <http://www.policeforum.org/assets/guidingprinciples1.pdf>.

³ The Hawai'i Legislature recently appropriated funds for a law enforcement assisted diversion ("LEAD") pilot program in Hawai'i. *See also* LEAD National Support Bureau website ("In a LEAD® program, police officers exercise discretionary authority at point of contact to divert individuals to a community-based, harm-reduction intervention for law violations driven by unmet behavioral health needs."), *available at*

<https://www.leadbureau.org/about-lead>. The ACLU of Hawai'i is part of a coalition led by the Chow Project trying to bring this pre-arrest and pre-booking diversion program to Hawai'i. *See* The Chow Project website, *available at* <http://www.chowproject.org/lead.html>.

- 9) Are you committed to ensuring that the public knows how the police department functions, including through improved data collection in electronic form and the adequate disclosure and reporting of all incidents involving the use of force, the use and deployment of surveillance technology, the use of body cameras, and confirmed incidents of police misconduct?
- 10) Are you committed to addressing civil asset forfeiture abuse by supporting legislation to require a criminal conviction of the underlying offense prior to forfeiture (but not prior to seizure), voluntarily reporting expenditures of any and all funds procured through the Honolulu Police Department's participation in civil asset forfeiture (including through the Department's cooperation with federal agencies), and instructing law enforcement officers under your supervision that the mere act of carrying a large amount of cash alone cannot satisfy probable cause for the seizure of property pursuant to Hawai'i Revised Statutes Section 712A-6?

While not comprehensive, these questions will hopefully begin a conversation about the role of the police in protecting civil rights that will help the public regain their trust in the police department's leadership and mission. We also hope you will take into consideration not only the candidates' answers to these questions, but also their past actions and proven commitments to protecting civil liberties. In our experience, actions speak louder than words.

The ACLU of Hawai'i remains a resource to the Commission for any additional information you may need on these matters, including model policies, best practices, and procedures. We will continue to monitor the police in our role to defend and preserve the rights and liberties guaranteed by the Constitution and appreciate your attention to the important issues raised in our request.

Sincerely,



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