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May 18, 2016

The Honorable Loretta Lynch
Attorney General
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Lynch:

We are concerned by reports that the Department of Justice (DOJ) sought and obtained a consent decree in federal court requiring the New Orleans Police Department (NOPD) to adopt policies that prohibit police officers from considering an individual's immigration status when performing their law enforcement duties. Also troubling are reports that DOJ reviewed and approved written policies promulgated by NOPD in implementing the consent decree, which appear to restrict the ability of NOPD officers to respond to requests from U.S. Immigration and Customs Enforcement (ICE) to assist in the enforcement of federal immigration law. This written policy, "Immigration Status," became effective on February 28, 2016, and it now appears in Chapter 41.6.1 of the NOPD Operations Manual.¹ The relevant policy statements provide:

3. NOPD members shall not make inquiries into an individual's immigration status, except as authorized by this Chapter.
4. The enforcement of civil federal immigration laws falls exclusively within the authority of the United States Immigration and Customs Enforcement agency (ICE).
5. The NOPD shall not engage in, assist, or support immigration enforcement except as follows: (a) In response to an articulated, direct threat to life or public safety; or (b) When such services are required to safely execute a criminal warrant or court order issued by a federal or state judge.

¹ The NOPD "Immigration Status" policy is available at:
<http://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/Chapter-41-6-1-Immigration-Status.pdf/>.

6. Unless authorized by Paragraph 5, members are not permitted to accept requests by ICE or other agencies to support or assist in immigration enforcement operations In the event a member receives a request to support or assist in a civil immigration enforcement action[,] he or she shall report the request to his or her supervisor, who shall decline the request and document the declination in an interoffice memorandum to the Superintendent through the chain of command.

The NOPD “Immigration Status” policy statements purportedly derive from a consent decree entered into by the City of New Orleans and DOJ on or about July 24, 2012, and approved by the U.S. District Court for the Eastern District of Louisiana on January 11, 2013.² The consent decree itself was the result of a request by the mayor of the City of New Orleans to DOJ in May 2010, to review NOPD practices and procedures. In 2011, DOJ’s Civil Division determined that NOPD engaged in a pattern of civil rights violations and, as a result, DOJ initiated litigation against the City of New Orleans to remedy those violations.³ The consent decree was intended to resolve that litigation.

However, it is outrageous that DOJ would seek a consent decree to actually inhibit the ability of the federal government to enforce federal law. By hindering the ability of ICE to apprehend criminal aliens, DOJ consciously disregards the safety and security of the American public by enabling the release of these criminals back into our communities to commit more crimes. It also places ICE agents and officers at greater risk when they are forced to arrest these criminal aliens who are no longer in a secure jail facility, but in public places where they can more readily escape or access a weapon. In addition, the consent decree may be interpreted to require NOPD to adopt policies that require its officers to violate federal law. The policy statements referenced above could be read to require the violation of 8 U.S.C. § 1373, which provides that no person or agency may prohibit or restrict a federal, state, or local agency from sending, requesting, receiving, or exchanging information about an individual’s immigration status with ICE.

The Louisiana Legislature is currently considering Louisiana House Bill 151, the “Illegal Alien Sanctuary Policy Prohibition Act.” A legislative hearing on H.B. 151 was held on April 21, 2016, before the Louisiana House Judiciary Committee. At that hearing, representatives from the New Orleans Mayor’s Office and NOPD testified that the “Immigration Status” policy statements were vetted and “enthusiastically” approved by DOJ’s Civil Division.

On April 27, 2016, the Louisiana Attorney General sent you a letter regarding the NOPD policy statements. In the letter, Louisiana Attorney General Landry requested that you confirm whether DOJ (1) reviewed and approved the NOPD policy statements, and

² *U.S. v. City of New Orleans*, 2:12-CV-01924-SM-JCW (E.D. La. Jan. 11, 2013), available at: http://www.laed.uscourts.gov/consent/12cv01924_Doc2-1.pdf.

³ U.S. Department of Justice, Civil Rights Division, *Investigation of the New Orleans Police Department*, Mar. 16, 2011, available at: https://www.justice.gov/sites/default/files/crt/legacy/2011/03/17/nopd_report.pdf.

(2) required the City of New Orleans to adopt the NOPD policy statements as part of the consent decree. The answers to those questions are critical to determine whether DOJ may have impermissibly approved the violation of federal law or required NOPD to violate federal law as a condition of compliance with the consent decree. Therefore, please provide us with a copy of your response to Louisiana Attorney General Landry's letter when it is issued.

To more fully understand the issues described above, on or before May 30, 2016, please also provide copies of all written, printed, recorded, graphic, electronic, audio, or visual material of any kind, whether prepared by you or by any other person, that is in the possession, custody, or control of DOJ, which refers to, or relates to:

1. Any and all communications made by or on behalf of the City of New Orleans, NOPD, DOJ, or any other person, regarding or in response to the review or investigation of the practices or procedures of NOPD on or after January 2009.
2. Any and all communications concerning the consent decree in *U.S. v. City of New Orleans*, 2:12-CV-01924-SM-JCW (E.D. La. Jan. 11, 2013), including all antecedent communications regarding the decision to initiate that litigation, and all antecedent communications regarding the prosecution and settlement of that litigation.
3. Any and all communications regarding the development, drafting, review, approval, or promulgation of any NOPD policy regarding the immigration status of any person, including the policy statements found in Chapter 41.6.1 of the NOPD Operations Manual.

For purposes of this request, "communications" means any disclosure, transfer, or exchange of information or opinion, however made, including but not limited to, emails, voice mails, fax, memoranda, inquiries, or reports. If you cannot fully respond to this request, please identify the specific item within this request to which you cannot fully respond and explain the constitutional rationale for not fully responding.

Additionally, please provide a briefing to Committee staff regarding the foregoing matters on or before June 1, 2016.

If you have any questions about this request, please contact Tracy Short, Counsel, Subcommittee on Immigration and Border Security, at (202) 225-3926. Thank you for your attention to this matter.

Sincerely,



Bob Goodlatte
Chairman, Committee on the Judiciary



Trey Gowdy
Chairman, Subcommittee on
Immigration and Border Security