

JOINT STATEMENT

SUBMITTED TO THE U.S. HOUSE JUDICIARY COMMITTEE SUBCOMMITTEE ON IMMIGRATION AND BORDER SECURITY

HEARING ENTITLED "NEW ORLEANS: HOW THE CRESCENT CITY BECAME A SANCTUARY CITY"

September 27, 2016

We, the undersigned civil rights, immigrant rights, victims' services, and human rights organizations write to express our strong opposition to any arguments suggesting that so-called state and local "sanctuary" policies violate 8 U.S.C. § 1373 or that any such violation would render a state or locality ineligible to receive federal funding through the Edward Byrne Memorial Justice Assistance Grant (JAG) or State Criminal Alien Assistance Program (SCAAP). In particular, given the focus of the House Judiciary Subcommittee on Immigration and Border Security's hearing on September 27th, "New Orleans: How the Crescent City Became a Sanctuary City," we wish to underscore our unequivocal view that the New Orleans Police Department (NOPD) in no way violates 8 U.S.C. § 1373 and that this hearing is nothing more than yet another cynical attempt to demonize immigrant communities.

On July 28, 2016, the Department of Justice's (DOJ) Office of the Inspector General (OIG) issued a memo analyzing whether certain jurisdictions' policies to limit entanglement between state and local police and federal immigration authorities were in violation of 8 U.S.C. § 1373, a federal statute that prohibits state and local governments from enacting laws or policies that restrict communication with DHS about "information regarding the citizenship or immigration status" of any individual. The statute does not place affirmative obligations on any government agency to collect or share information about immigration status or citizenship. Nor does it obligate government agencies to share other types of information, such as that relating to an individual's criminal court case, custody status or release date. It is solely focused on policies that prohibit limitations on sharing immigration-status information.

The memo was issued in response to certain Members of Congress who have repeatedly sought to pass coercive legislation that would financially punish states and localities that have limited entanglement with federal immigration authorities in order to promote public safety and community policing. Despite the fact that the DOJ OIG memo is not legally binding and does not make any conclusions about any jurisdictions violating 8 U.S.C. § 1373, it named ten jurisdictions' policies and insinuated, without making any actual findings, that there may be a connection between these jurisdictions' so-called "sanctuary" policies and violations of 8 U.S.C. § 1373.¹

The NOPD policy was adopted as part of a DOJ consent decree through a court-approved process. The policy reflects thoughtful multi-stakeholder community consensus on how to overcome a pattern and practice of unconstitutional police behavior investigated by DOJ. DOJ's findings included "reports of specific incidents in which immigrant workers called to request police assistance after being victimized by crime, but instead of

¹ The DOJ OIG Report recommended that grant applicants be required to provide certification specifying compliance with 8 U.S.C. § 1373 along with documentation sufficient to support the certification.

providing assistance, NOPD officers questioned them about their immigration status. Consequently, we found a strong belief among some segments of the Latino community that reporting crime to NOPD may subject the reporter to unwanted attention or harassment.”² Specifically, under the current consent decree NOPD Operations Manual Chapter 41.6.1, Immigration Status, *requires* NOPD to construe its policy in accordance with 8 U.S.C. § 1373(a). By definition, therefore, nothing about the NOPD policy violates the narrow prohibition of 8 U.S.C. § 1373 on limiting the sharing of citizenship or immigration status.

Variations of so-called sanctuary policies have been adopted by more than 340 jurisdictions across the country, and with good reason. When state/local law enforcement is entangled in doing the work of federal immigration authorities, it deepens fear and mistrust for crime survivors and witnesses who might otherwise come forward. Policies like that of the NOPD and hundreds of other jurisdictions aim to promote public safety by making sure crime survivors and witnesses are welcomed by the system rather than frightened away. This is particularly important at a time when relationships between law enforcement and communities are strained by years of policing practices that have created fear and distrust of police.

Overwhelmingly, law enforcement officials have spoken up in favor of so-called sanctuary policies, because they agree such policies foster communication from crime victims and witnesses, thereby creating a safer environment for everyone. For example, the Major Cities Chiefs Police Association has said that state and local police involvement in enforcing immigration law undermines immigrant community trust and cooperation with police and significantly diverts resources from the core law-enforcement mission to create safe communities.³ Similarly, the Police Executive Research Forum has documented concerns of law enforcement officials across the country who believe that mandating or incentivizing state/local immigration enforcement takes away their discretion to set priorities and threatens police-community relationships.⁴

State and local governments have incurred millions of dollars in legal defense costs over the last several years from responding to claims that immigration enforcement policies and practices led to unconstitutional rights abuses, racial profiling, and unjustified detentions.⁵ Local governments found to have violated individual rights through immigration enforcement activities have paid damages ranging from \$8,000 to \$200,000.⁶

Rather than subject the NOPD to politically-motivated and unwarranted scrutiny, we should be holding it up as a model. More broadly, these policies also reflect a failure by Congress to take any serious steps towards crafting a broad and humane overhaul to our dysfunctional immigration system. We urge you to focus on enacting policies that encourage and allow immigrants to contribute even more to their families, communities, and our country rather than isolating and criminalizing them.

Sincerely,

American Civil Liberties Union

Asian Americans Advancing Justice - AAJC

² https://www.justice.gov/sites/default/files/crt/legacy/2011/03/17/nopd_report.pdf

³ [Chief Thomas Manger](#), Major Cities Chiefs Association, to Hon. Bob Goodlatte and Hon. Trey Gowdy, March 13, 2015.

⁴ Police Executive Research Forum, [Local Police Perspectives on State Immigration Policies](#), July 2014.

⁵ See, e.g., ACLU, “ICE Detainers and the Fourth Amendment: What do Recent Federal Court Decisions Mean?” (Nov. 13, 2014), https://www.aclu.org/sites/default/files/assets/2014_11_13_-_ice_detainers_4th_am_limits.pdf

⁶ National Immigration Forum Staff, [“Community and Courtroom Responses to Immigration Detainers,”](#) October 20, 2014; Tim Henderson, [“More Jurisdictions Defying Feds on Deporting Immigrants,”](#) *Pew Stateline*, October 31, 2014.

Asian Americans Advancing Justice - Asian Law Caucus

Asian Americans Advancing Justice - Atlanta

Asian Americans Advancing Justice - Chicago

Asian Americans Advancing Justice - Los Angeles

National Day Laborer Organizing Network

National Immigrant Justice Center

National Immigration Law Center

National Immigration Project of the National Lawyers Guild

New Orleans Worker's Center for Racial Justice