



Office of the Inspector General
United States Department of Justice

Statement of Michael E. Horowitz
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before the

U.S. House of Representatives
Committee on the Judiciary
Subcommittee on Immigration and Border Security

concerning

"New Orleans: How the Crescent City Became a Sanctuary City"

September 27, 2016

Mr. Chairman, Congresswoman Lofgren, and Members of the Subcommittee:

Thank you for inviting me to testify before you today. Earlier this year, the Department of Justice (Department or DOJ) Office of Justice Programs (OJP) advised the Office of the Inspector General (OIG) that it had received information indicating that several jurisdictions receiving Department grant funds may be in violation of 8 U.S.C. Section 1373 (Section 1373), and asked the OIG to investigate the allegations. Section 1373 provides that Federal, State, and local government officials cannot prohibit or restrict communication of information regarding the citizenship or immigration status of an individual to Federal immigration officials. Accompanying its request, the Department provided the OIG with grant-related information for more than 140 state and local jurisdictions that had active grant awards or received State Criminal Alien Assistance Program (SCAAP) payments in 2015. In addition, OJP provided a letter from Congressman John Culberson to the Attorney General regarding whether Department grant recipients were complying with Federal law, particularly Section 1373, and attached to this letter was a January 2016 study by the Center for Immigration Studies.

We reviewed the matter as requested by the Department and provided OJP with a memorandum advising it of the steps we had taken and summarizing the information we had learned. We did so expeditiously because, in part, the Department's grant process was ongoing and we found that the Department had not yet provided grant recipients with clear guidance as to whether Section 1373 was an "applicable federal law" that recipients were expected to comply with in order to satisfy relevant grant rules and regulations. The OIG memorandum can be found on our website at: <https://oig.justice.gov/reports/2016/1607.pdf>.

Summary of OIG Findings

Based on the large number of jurisdictions referred by OJP and the need to provide our review expeditiously, we judgmentally selected a sample of 10 state and local jurisdictions from the list provided to us by OJP for further review. For each of these jurisdictions, we researched the local laws and policies that govern their interactions with U.S. Immigration and Customs Enforcement (ICE), assessed these laws and policies, and interviewed ICE officials to gain their perspective on ICE's relationship with the selected jurisdictions.

While a primary and frequently-cited indicator of limitations placed on cooperation by state and local jurisdictions with ICE is how the particular jurisdiction handles immigration detainer requests, we noted that Section 1373 does not specifically address restrictions on cooperation with ICE detainer requests. We further noted that the Department of Homeland Security has made a legal determination that civil immigration detainers are voluntary in nature and that the ICE officials with whom we spoke told us that they are not enforceable against jurisdictions which do not comply.

Based on our research, we found that each of the 10 jurisdictions had laws or policies that placed limitations on how they could respond to an ICE detainer

request. Some jurisdictions honored a detainer request when the subject had prior felony convictions, gang membership, or listing on a terrorist watchlist, while other jurisdictions did not honor a detainer request under any circumstances.

In addition, we found that the laws and policies of several of the jurisdictions we reviewed went beyond placing limitations on complying with civil immigration detainer requests and potentially limited the sharing of immigration status information with Federal immigration authorities. For example, one jurisdiction prohibited its employees from providing information about the citizenship or immigration status of any person “unless required to do so by legal process.” This “savings clause” language appeared to us to be inconsistent with the plain language of Section 1373 because, for example, Section 1373 does not require cooperation with ICE through “legal process” but rather is intended to permit employees to provide immigration status information to ICE upon request. Moreover, to be effective, this “savings clause” provision presumably would have to render the restriction described in the ordinance null and void with respect to ICE requests for immigration status information, even though the very purpose of the ordinance was to restrict cooperation with ICE.

Similarly, we found that the laws and policies of other jurisdictions in our sample group that addressed the handling of ICE detainer requests might have a broader practical impact on the level of cooperation with ICE, and might be inconsistent with the intent of Section 1373. For example, one jurisdiction’s prohibition relating to personnel expending their time responding to ICE inquiries could easily be read by employees and officers as prohibiting them from expending time responding to ICE requests relating to immigration status. While these policies do not explicitly restrict the sharing of information, they could cause local officials to apply them in a manner that prohibits or restricts cooperation with ICE, which would be inconsistent with Section 1373. Indeed, this concern was expressed to us by ICE officials.

Steps for the Department to Undertake

As we noted in our memorandum to the Department, in March 2016, OJP notified SCAAP and Edward Byrne Memorial Justice Assistance Grant (JAG) applicants about the requirement to comply with Section 1373, and advised them that if OJP received information that an applicant may be in violation of Section 1373, the applicant may be referred for further investigation to the OIG and may be subject to criminal and civil penalties, in addition to relevant OJP programmatic penalties.

In light of the Department’s notification to grant applicants, we advised the Department that it should consider taking additional steps, including:

- Providing clear guidance to grant recipients regarding whether they would be expected to comply with Section 1373 in order to satisfy relevant grant rules and regulations;

- Requiring grant applicants to provide certifications specifying the applicants' compliance with Section 1373, along with documentation sufficient to support certification; and
- Ensuring grant recipients clearly communicate to their personnel the provisions of Section 1373, especially that employees cannot be prohibited or restricted from sending citizenship or immigration status information to ICE.

In addition, we suggested that the Department consult with ICE and other Federal agencies, prior to awarding a grant, to determine whether applicants are prohibiting or restricting the sharing of this information by employees with ICE.

We believe that these steps would provide the Department with assurances that the grant applicant was operating in compliance with Section 1373 and would also be helpful should the Department refer alleged violations of Section 1373 to the OIG for further investigation.

This concludes my prepared statement, and I will be pleased to answer any questions that the Subcommittee may have.