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Attorney General

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State of Louisiana
DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL
P.O. BOX 94005
BATON ROUGE
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The Honorable Loretta Lynch
Attorney General – U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

RE: New Orleans Police Department Policy Changes

Dear Attorney General Lynch:

Important questions have recently emerged in Louisiana with regard to “sanctuary cities” and the interpretation of relevant federal law by the U.S. Department of Justice.

Louisiana House Bill 151, introduced by Representative Valarie Hodges, is currently moving through the Louisiana legislature. The purpose of this bill is to discourage Louisiana’s political subdivisions from adopting policies that prohibit cooperation with federal law enforcement officers and incentivize illegal immigration. In essence, this bill would discourage the adoption of sanctuary city policies by these political entities. I write to bring to your attention some disconcerting information I received recently during a hearing on H.B. 151.

On April 21, 2016, the Louisiana House Judiciary Committee took up H.B. 151; and during testimony on the bill, several persons stated the U.S. Department of Justice had *mandated* that the City of New Orleans adopt policies that would constitute forbidden sanctuary city policies under the bill. The purported mandate arises out of a Consent Decree (applicable section enclosed for your review) entered into by the U.S. Department of Justice and the City of New Orleans on July 24, 2012. Pursuant to the Consent Decree, the New Orleans Police Department (NOPD) – with the alleged approval by the U.S. Department of Justice – published the following policy changes to its Department Operations Manual.

Chapter 41.6.1 now states:

3. *NOPD members **shall not** make inquiries into an individual’s immigration status, except as authorized by this Chapter.*

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.*

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, including but not limited to request to establish traffic perimeters related to immigration enforcement.*

*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.*

A copy of this policy is also enclosed.

Based on this policy change and the supposed meeting between officials of the City of New Orleans and the U.S. Department of Justice, it can only be inferred that the U.S. Department of Justice has mandated that the City of New Orleans adopt a Sanctuary City Policy.

I have read both the Consent Decree and the NOPD policy. As you are aware – U.S. Code Title 8, Section 1373 states:

(b) Additional authority of government entities;

*Notwithstanding any other provision of Federal, State, or local law, **no person or agency may prohibit, or in any way restrict**, a Federal, State, local government entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:*

- (1) Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.*
- (2) Maintaining such information.*
- (3) Exchanging such information with any Federal, State, or local government entity.*

Furthermore, U.S. Code Title 8, Section 1324(a)(1)(A)(iv) makes it a felony under circumstances wherein:

Any person who—

(iv)

encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law....

It would appear that Chapter 41.6.1 of the NOPD Operations Manual violates both of these federal statutes. I can only presume that a miscommunication occurred between the U.S. Department of Justice and the City of New Orleans. Presumably, the U.S. Department of Justice would not enter into a Consent Decree that would compel the City of New Orleans to violate federal law. Moreover, I find nothing within the Consent Decree that would mandate the adoption of such sweeping sanctuary policies and that requires the City of New Orleans to violate federal law. Thus, it seems that the City of New Orleans may have adopted a policy that goes well beyond what was required under the Consent Decree.

Additionally, I am perplexed by the implication that the U.S. Department of Justice would require – through a federal Consent Decree – *any* city or law enforcement authority or officer to **not cooperate** with federal

authorities. Nor, can I believe that a Federal Court would approve language in any Consent Decree that would force a municipality or its law enforcement agency or officials to knowingly and intentionally violate unambiguous federal law.

Considering the above, I cannot conceive that the NOPD policy could have been approved by the U.S. Department of Justice. The City of New Orleans's policy – as currently written – mandates that public officials violate their oath of office, which requires them to uphold the laws of the State and the United States. Any official following this policy may also be in violation of Louisiana criminal laws – specifically, Louisiana Revised Statutes 14:134 (malfeasance in office) and 14:130.1 (obstruction of justice).

In light of these developments, I am requesting that you please clarify the position of the U.S. Department of Justice with regard to the following questions:

- 1) Did the U.S. Department of Justice review and approve Chapter 41.6.1 of the NOPD Operations Manual as part of its ongoing participation in federal judicial supervision under the Consent Decree?
- 2) If the answer is yes, please explain how a policy that clearly violates federal law could have been approved.
- 3) Did the U.S. Department of Justice *require* the City of New Orleans adopt the Sanctuary City Policy attached hereto as part of the Consent Decree?
- 4) If the answer is yes, please explain what authority the U.S. Department of Justice claims authorizes it to mandate such a requirement in direct violation of federal law.

It seems likely that some miscommunication between the U.S. Department of Justice and the City of New Orleans regarding these issues occurred. As you can expect, many of the Louisiana House Judiciary Committee members were as concerned about these issues as I was. The fact that H.B.151 passed out of their Committee without opposition reflects the strong opposition the people of our great State have for sanctuary city policies.

As this bill is quickly moving through the legislative process, I am requesting that a response to these questions be communicated to me within 15 business days of receipt of this letter. If I fail to receive a response within that time frame, I will presume that you agree the Consent Decree does not mandate the broad sanctuary city language currently in the NOPD policy.

Thank you in advance for your timely response to this correspondence and for your dedication to keeping our country secure.



Jeff Landry
Louisiana Attorney General

Enclosures

CC: Rep. Katrina Jackson, Rep. Mike Johnson, Rep. Bryan Adams, Rep. John Bagneris, Rep. Chad Brown, Rep. Robby Carter, Rep. Gary Carter, Rep. Jean-Paul Coussan, Rep. Randal Gaines, Rep. Jimmy Harris, Rep. Chris Hazel, Rep. Valarie Hodges, Rep. Robert Johnson, Rep. Christopher Leopold, Rep. Joseph Lopinto, Rep. Tanner Magee, Rep. Jay Morris, Rep. Robert Shadoin, Rep. Jerome Zeringue

183. Within 365 days of the Effective Date, NOPD agrees to develop and implement a plan to provide all individuals within the City essential police services regardless of immigration status, in order to build and preserve trust among community members, and to more effectively prevent and solve crime. As part of this plan:

- a) Officers shall not take law enforcement action on the basis of actual or perceived immigration status, including the initiation of stops or other field contacts;
- b) Officers shall not question victims of, or witnesses to, crime regarding their immigration status. Nothing in this provision shall prohibit NOPD from assisting nonimmigrant victims/witnesses in obtaining U-Visa / T-Visas, where appropriate;
- c) Officers shall not enforce La. R.S.14:100.13, which the Court of Appeals of Louisiana, Fourth Circuit, has found to unlawfully pre-empt federal regulations; and
- d) NOPD shall seek the assistance of community advocates in widely disseminating to the public, in English and in Spanish, NOPD's written policy incorporating these requirements.

184. NOPD agrees to develop and implement a specific policy to guide officers' interactions with members of the LGBT community, which shall prohibit discrimination based on sexual orientation, gender identity, or gender expression.

185. NOPD agrees that officers will treat LGBT individuals with courtesy, professionalism, and respect, and that officers are specifically prohibited from using harassing, intimidating, or derogatory language regarding or toward LGBT individuals. This shall include addressing transgender individuals with their chosen name, title, and pronoun.

186. NOPD agrees that officers shall not construe sexual orientation, gender identity, or gender expression as reasonable suspicion or probable cause that an individual is or has engaged in any crime, and that officers shall not request identification from or otherwise initiate a contact solely on the basis of sexual orientation or gender identity/expression.

187. NOPD agrees that officers will not subject transgender individuals to more invasive or more frequent frisk procedures due to transgender status. Officers shall not frisk any person for the purpose of determining that person's gender or to view or touch the person's genitals. Where same-gender searches are required by law or NOPD policy, the officer shall respect the gender identification expressed by the individual. Where the individual does not self-identify and the gender identity is not clear to a reasonable person or the officer is uncertain, the officer will take



NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

CHAPTER: 41.6.1

TITLE: IMMIGRATION STATUS

EFFECTIVE: 02/28/2016

REVISED: Replaces Policy 428

PURPOSE

The purpose of this Chapter is to set forth the policy of the New Orleans Police Department (NOPD) to provide police services to all persons within New Orleans ("the City") regardless of their immigration status.

POLICY STATEMENT

1. Members shall treat all individuals equally and without regard to race, color, or national origin in any way that would violate the United States or Louisiana Constitutions. To encourage crime reporting and cooperation in the investigation of criminal activity, all individuals, regardless of their immigration status, must feel secure that contacting or being addressed by members of the NOPD will not lead to an immigration inquiry and/or deportation.
2. Members shall not initiate an investigation or take law enforcement action on the basis of actual or perceived immigration status, including the initiation of a stop, an apprehension, arrest, or any other field contact.
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.

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, including but not limited to requests to establish traffic perimeters related to immigration enforcement. 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.

Nothing in this provision shall prohibit NOPD members from assisting victims or witnesses in obtaining U Visa/T Visas, where appropriate.

7. In *State v. Sarrabea*, 2013-1271 (La. 10/15/13), the Supreme Court of Louisiana found La. R.S. 14:100.13 unenforceable. Accordingly, members shall not enforce La. R.S. 14:100.13, which states: "No alien student or nonresident alien shall operate a motor vehicle in the state without documentation demonstrating that the person is lawfully present in the United States."

DEFINITIONS:

Definitions related to this policy include:

Administrative warrant—For purposes of this Chapter, this term refers to administrative removal warrants used by Immigrations and Customs Enforcement officers to arrest non-citizens who have committed immigration violations. An administrative warrant is not a criminal warrant signed by a judge, and it shall not be used by NOPD as the basis to detain or arrest a person or persons.

Immigration Status—Refers to an individual's status with respect to federal immigration law and/or citizenship. For example, a person who enters the United States without legal permission may be considered an "undocumented person." Another person who is legally granted permission to reside in the United States permanently may be considered a "lawful permanent resident."

ICE—The United States Immigration and Customs Enforcement is the federal law enforcement agency under the Department of Homeland Security responsible for enforcement of federal laws related to border control, customs, trade and immigration.

REQUEST FOR IDENTIFYING INFORMATION

8. While it may often be necessary to determine the identity of a victim or witness, consistent with applicable law, members shall not question, investigate, or inquire about the immigration status of any person, including a victim or witness. Accordingly, Members are permitted to request identification from an individual only as authorized by NOPD policy.
9. Persons are not required to prove their citizenship status. Members shall not request identification for the purpose of determining an individual's citizenship status.
10. When identification is requested, Members shall accept presentation of a photo identity document issued by a non-government organization or a verbal statement of the person's full name and date of birth. Members shall not require that a person produce a foreign passport or non-U.S. driver's license as evidence of identity.

11. Although not required as evidence of identity or citizenship, a driver's license is required for operation of a motor vehicle, regardless of a person's immigration status (see La. R.S. 32:52 and La. R.S. 32:402). Members may request the driver of a motor vehicle to produce a driver's license. The failure of a motor vehicle operator to produce a driver's license upon request after a moving violation or traffic stop may subject the operator to the appropriate charge (i.e. driving without a license).

DISCLOSING IMMIGRATION INFORMATION

12. Members shall not disclose information regarding the citizenship or immigration status of any person unless:
 - (a) Required to do so by federal or state law; or
 - (b) Such disclosure has been authorized in writing by the person who is the subject of the request for information; or
 - (c) The person is a minor or otherwise not legally competent, and disclosure is authorized in writing by the person's parent or guardian.

U VISAT VISA NONIMMIGRANT STATUS

13. Under certain circumstances, federal law allows victims and witnesses of certain qualifying crimes to obtain temporary immigration benefits (See 8 U.S.C. § 1101(a) (15) (U), 8 U.S.C. § 1101(a) (15) (T)). Upon the request of a victim or witness for assistance in obtaining such benefits, a declaration/certification for a U Visa/T Visa from the U.S. Citizenship and Immigration Services may be completed on the appropriate DHS Form supplements (1 -918 or 1-914) by law enforcement. The declaration/certification must include information detailing how the individual has been, is being, or is likely to be helpful in a criminal investigation or prosecution.
14. Any request for assistance in applying for U Visa/T Visa status shall be directed to the NOPD Victim/Witness Unit. The Investigation and Support Bureau Commander or his/her designee shall do the following:
 - (a) Consult with the assigned detective to determine the current status of any related case(s) , and assess whether further documentation is warranted;
 - (b) Review the instructions for completing the declaration/certification. Instructions for completing Forms 1-918/1-914 can be found on the DHS website at <http://www.uscis.gov/portal/site/uscis>;
 - (c) Contact the appropriate prosecutor assigned to the case, if applicable, to ensure that the declaration/certification has not already been completed and to assess whether a declaration/certification is warranted;
 - (d) Address the request and complete the declaration/certification, if appropriate, in a timely manner;
 - (e) Ensure that any decision to complete or not complete the form is documented in the case file and forwarded to the appropriate prosecutor; and
 - (f) Include a copy of the any completed certification in the case file.

USE OF NCIC DATABASE INFORMATION

15. When the NCIC database indicates an individual may be subject to an immigration related warrant, the Member shall contact the NOPD NCIC unit. If the NOPD NCIC unit determines the warrant is administrative, the NOPD NCIC unit shall not contact ICE. NOPD members shall take no action against an individual in response to an ICE administrative warrant.

16. If the NOPD NCIC unit cannot determine whether the warrant is administrative, the NOPD NCIC unit shall contact ICE at the number provided in the NCIC database to verify whether the individual has an outstanding criminal warrant. If there is no outstanding federal, state or local criminal warrant, the officer shall immediately release the individual. If NOPD NCIC is unable to promptly determine the nature of the warrant, the individual shall be released. If an arrest is made for a crime unrelated to an administrative warrant, normal arrest procedures shall be followed.

TRAINING

17. The Education and Training Division shall ensure that all members in the Recruit Basic Training Program receive training on this Chapter and that all members receive appropriate training on this Chapter as part of their annual In-Service training.