

TESTIMONY OF
ZACH BUTTERWORTH
ON BEHALF OF THE
CITY OF NEW ORLEANS
AND
NEW ORLEANS POLICE DEPARTMENT
BEFORE THE
JUDICIARY COMMITTEE
SUBCOMMITTEE ON IMMIGRATION AND BORDER SECURITY
CHAIRMAN GOWDY, PRESIDING
UNITED STATES HOUSE OF REPRESENTATIVES
HEARING:

New Orleans: How the Crescent City Became a Sanctuary City

September 27, 2016 10:00 AM

Chairman Gowdy, Ranking Member Lofgren and members of the committee: I am Zach Butterworth, Executive Counsel and the Director of Federal Relations for the City of New Orleans. Thank you for inviting me to provide testimony to the Committee as it considers these important issues.

Before I delve into my testimony, I want to emphasize three points:

1. Public safety is our top priority in New Orleans. Anyone — legal or undocumented — who commits a violent crime in New Orleans will be arrested. Our record shows that every day, the New Orleans Police Department (NOPD) works closely with federal and state law enforcement agencies to keep violent criminals off our streets. In 2012, Mayor Landrieu formed the Multi-Agency Gang (MAG) Unit to bring the most violent criminals to justice. The MAG Unit consists of law enforcement officials from NOPD, Orleans Parish District Attorney's Office, Orleans Parish Sheriff's Office, Louisiana State Police, Parole Board of the Louisiana Department of Corrections, United States Attorney's Office, Federal Bureau of Investigation, Bureau of Alcohol, Tobacco, Firearms, and Explosives, Drug Enforcement Administration, United States Marshal's Service, and the United States Probation & Parole Office for the Eastern District of Louisiana. To date, prosecutions by the MAG Unit have led to the conviction of more than 100 violent criminals.
2. The NOPD's policy does not make New Orleans a sanctuary city — we are following federal law.
3. The NOPD's policy on immigration status will make our city safer by allowing officers to focus on protecting the public and ensuring that everyone is able to report crimes and cooperate as witnesses. The policy is bearing fruit. In the last few months, a hispanic male was approached

by an armed individual who placed the gun to his head and robbed him. The victim called the police and the assailant was apprehended. This victim cooperated with the DA's office as well as NOPD and another violent criminal is off the streets — convicted of armed robbery.

For generations, New Orleans, like many communities, has seen tension between the police and the community. When Mayor Landrieu took office in 2010, the U.S. Department of Justice (DOJ) had already launched a series of investigations related to civil rights abuses by officers in the Department. It was clear that changes were needed, so Mayor Landrieu immediately requested that the DOJ step in to help reform the Department.¹ At the time, the public rightly demanded that the police operate in a manner consistent with the Constitution and all federal, state and local laws.

In 2012, the NOPD and the DOJ entered into a comprehensive Consent Decree that reflected years of work and a shared commitment to effective, constitutional and professional law enforcement. The Consent Decree contains an array of separate requirements detailed in more than 492 paragraphs and 122 pages.

Since then, we have completely overhauled the NOPD. We have launched 11 new recruit classes and put in place 34 new operational policies that continue to transform the culture of the Department. The new policies cover use of force, K9 use, proper prisoner transport, taser operation, body-worn camera operation and how officers should respond to reports of sexual assault, to name just a few.

¹ New Orleans has a unique political structure. The mayor and sheriff represent separate and distinct political subdivisions that are independently elected by the citizens of New Orleans. The mayor is elected parish-wide to lead the executive branch of government, including the NOPD. The Orleans Parish Sheriff is elected parish-wide to oversee the jail, which is currently under the operational control of a federally appointed compliance director.

To ensure constitutionality, workability and consistency, every policy that the NOPD adopts is approved by the Federal Consent Decree Monitor² (Federal Monitor) and the DOJ's Civil Rights Division. It should go without saying that all policies must promote public safety and adhere to local, state and federal laws. Additionally, the entire Consent Decree falls under the oversight of Judge Susie Morgan of the United States District Court for the Eastern District of Louisiana.

This same process was followed in the drafting of the original and revised policies, Chapter 41.6.1, Immigration Status. Additionally, we engaged officials from the Department of Homeland Security (DHS) Immigration and Customs Enforcement (ICE) and reviewed best practices around the country. For instance, the Major City Chiefs Association, which represents law enforcement agencies covering 70 million Americans, supports policies that foster trust and cooperation between police officers and immigrant communities.

Beginning in September 2015, the City and NOPD held multiple discussions with ICE, both local and headquarters, to determine the requirements for local police departments regarding the treatment of undocumented immigrants. At that time, ICE verbally told NOPD that the draft policy complied with all ICE requirements.

Further, on December 1, 2015, Judge Morgan called a meeting with NOPD, ICE, DOJ and the Federal Monitor to give ICE agents the opportunity to raise any concerns with the new policy. Five ICE agents attended the meeting including the Chief Legal Counsel in the New Orleans field office. The local ICE representatives did not raise any substantive issues in the meeting, and were told to contact the monitor with any further concerns with the policy.

² In 2013, U.S. District Judge Susie Morgan selected the law firm of Sheppard, Mullin, Richter and Hampton as the Federal Consent Decree Monitor.

After the policy was thoroughly reviewed by the Federal Monitor, DOJ and NOPD, Federal Monitor David Douglass approved it on February 2, 2016. Mr. Douglass noted in the approval letter that the new policy “sets forth clear and appropriate rules to guide officer conduct.”

On March 3, 2016, Mayor Landrieu wrote to Attorney General Loretta Lynch and Department of Homeland Security Secretary Jeh Johnson, requesting that they contact the Federal Monitor if any officials within DHS or DOJ had concerns that the policy did not fully comply with any federal law. On July 7, 2016, the DOJ, on behalf of both agencies, responded with general guidance regarding 8 U.S.C. § 1373.

After receiving the guidance from DOJ, the NOPD’s compliance bureau reengaged the DOJ Civil Rights Division and the Federal Monitor. Out of an abundance of caution, we discussed changes to the policy that would ensure clarity regarding 8 U.S.C. §1373.

On September 22, 2016, the Federal Monitor, working with DOJ’s Civil Rights Division, and the NOPD, approved modifications to the NOPD’s policy. In approving the policy, the Federal Monitor stated that “[o]ur approval is also based on the representation by the Department of Justice that this policy complies with 8 U.S.C. §1373.”

The NOPD’s policy on immigrant status follows federal law and will make New Orleans safer. As required by the Consent Decree, the NOPD will annually review all policies to ensure that they prioritize public safety, best practices and current law.