

January 20, 2015

Tucson City Hall  
255 W. Alameda  
Tucson, AZ 85701

***Re: Community Proposal Regarding Tucson Police Department Immigration Policies***

Mayor Jonathan Rothschild & Tucson City Council Members,

We write to you as fellow Tucsonans with deep concern regarding Tucson Police Department (TPD) immigration policies. Specifically, we urge you to adopt reforms to protect the civil rights of Tucson residents and mitigate the harm done by Senate Bill 1070 (SB 1070). Many of these reforms were recommended by community members on November 13, 2013,<sup>1</sup> and most were adopted by South Tucson last year.

SB 1070 has done profound damage to this community. Families in Tucson are torn apart by discriminatory policing and excessive local law enforcement entanglement with immigration officials. Yet TPD resists even the simplest policy changes that would reduce these harms. For example, TPD still takes the position that it cannot prohibit officers from questioning crime victims and witnesses about their immigration status. This policy heightens community members' distrust of the police with clear public safety consequences for all Tucsonans. More recently, TPD took the position that even Tucson's students have no right to an educational environment free from the threat of questioning about their immigration status. This is simply unacceptable.

The Tucson City Council has been outspoken in its criticism of SB 1070, declaring Tucson an "Immigrant Welcoming City" and unanimously voting to revise several TPD immigration policies in November 2013. However, as is clear from the recent controversy over school resource officers, much remains for this City Council to do to follow through on its promise of an Immigrant Welcoming City, to protect residents' constitutional rights, and to mitigate the harm SB 1070 has done to this community.

In contrast, the City of South Tucson has taken the lead among Arizona municipalities in adopting sensible reforms to protect the constitutional rights of its residents. In May, South Tucson and the South Tucson Police Department (STPD) revised their immigration policies, adopting a number of the reforms that had been presented to the Tucson City Council in November 2013, as well as additional changes. We see no reason why the City of Tucson cannot work towards the adoption of identical or substantially similar language in its own policies, and we urge you to begin that process immediately.

At a minimum, we call on the City to revisit each of the reforms listed below, most of which have been pending before this Council for a year. On November 13, 2013, the ACLU submitted twenty (20) detailed recommendations for revising TPD policy. Those proposals, developed in consultation with community organizations, were specifically designed to protect civil rights without running afoul of SB 1070.<sup>2</sup> Some of those recommendations were unanimously adopted by this Council in November, but most have yet to be considered.

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<sup>1</sup> See ACLU of Arizona Testimony, Nov. 13, 2013, available at <http://bit.ly/1yzCYzr>.

<sup>2</sup> Many of those recommendations were based on a federal court's order in *Melendres v. Arpaio*, and yet many of the same immigration policies that were revised by the *Melendres* court remain in place at TPD. Recommendations 1, 2, 3, 5, and 7 address crucial portions of TPD policy that are inconsistent with the court's order in *Melendres*.

These changes would meaningfully benefit the community and are in no way precluded by state law. To the contrary, these changes would do much to prevent constitutional violations, which should of course be the highest priority for the City. SB 1070 itself requires that it “shall be implemented in a manner consistent with federal laws regulating immigration, *protecting the civil rights of all persons* and respecting the privileges and immunities of United States citizens.” (A.R.S. § 11-1051(L)) (emphasis added). For too long, Tucson has disregarded this directive.

We will no longer accept the City’s reflexive position that its “hands are tied” – as if no proposed changes in policy, even those entirely unrelated to SB 1070, deserve further debate. This failure to act, unsupported by any considered legal analysis or authority, endangers the civil rights of all Tucsonans. With regard to each of the recommendations below, if the City chooses not to act, we request an explanation for that choice, including as to each recommendation an explanation of *specifically how adoption would violate SB 1070 or any other law*.

- 1) **Prohibit officers from extending any stop or detention to await a CBP or ICE response.** Current TPD policy is extremely unclear and inconsistent in this regard, leaving the City vulnerable to liability for civil rights violations.
- 2) **Prohibit officers from relying on discriminatory factors in forming reasonable suspicion of unlawful presence.** TPD policy lists several factors that federal courts have indicated are improper bases for law enforcement decisions, including “difficulty speaking English” and presence in locations “where unlawfully present aliens are known to work.”
- 3) **Require officers to contact supervisors prior to questioning any individual regarding his or her immigration status and document the reasons such questioning is believed necessary.** Such a requirement would discourage discriminatory practices and clearly has no bearing on SB 1070.
- 4) **Prohibit officers from requiring passengers and pedestrians to provide identification when officers lack reasonable suspicion of a crime.** Under Arizona law, individuals not suspected of a crime are not required to show identification.
- 5) **Require cite and release wherever possible and absent exceptional circumstances.** Without clearer guidance, TPD’s cite and release decisions can too easily be made in a discriminatory manner.
- 6) **Require that when officers do contact immigration officials they call ICE, and not CBP.** This policy would be consistent with the requirements of SB 1070. South Tucson already has this policy in place, and at a Task Force meeting in January Chief Villaseñor indicated TPD would consider such a policy as well.
- 7) **Prohibit transportation of individuals to CBP or ICE facilities.** Current TPD policy is extremely unclear and inconsistent in this regard. Transportation extends stop times, potentially violating the Fourth Amendment.
- 8) **Prohibit detention of individuals on the basis of an invalid ICE “detainer” or other direction from federal immigration officials not supported by probable cause.** A growing number of

municipalities, including South Tucson, have revised detainer policies to reduce the risk of liability for constitutional violations.

- 9) **Prohibit officers from questioning crime victims and witnesses about their immigration status.** SB 1070 specifically contemplates this sensible policy; TPD's refusal to adopt this policy is irresponsible and places Tucson residents at risk of harm.
- 10) **Prohibit officers from questioning students about immigration status.** The Equal Protection Clause of the U.S. Constitution trumps SB 1070.

We thank you for your commitment to building an Immigrant Welcoming City. We will be contacting you individually in the coming days and weeks to discuss the recommendations contained herein, and look forward to more productive discussions on these important matters.

Sincerely,<sup>3</sup>

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