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VIA ELECTRONIC MAIL AND U.S. CERTIFIED MAIL

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At its September 23, 2014 meeting, the Tucson City Council addressed the question of School Resource Officers (SROs) and their authority to initiate immigration inquiries of students in Tucson schools.¹ Tucson Police Chief Villaseñor and Tucson City Attorney Rankin took the position that the Tucson Police Department (TPD) cannot limit SROs' authority to conduct immigration inquiries of students on the grounds that doing so would violate Section 2(B) of Arizona Senate Bill 1070 (SB 1070). We are writing to advise you that this position is incorrect because a policy allowing SROs to question students regarding immigration status would violate the U.S. Constitution. We urge you to rescind or amend your resolution of September 23 and include provisions prohibiting SROs from questioning students about their immigration status in any memorandum of understanding governing the placement of SROs in Tucson schools.

Education plays a "fundamental role in maintaining the fabric of our society." *Plyler v. Doe*, 457 U.S. 202, 221 (1982). A whole class of children cannot be denied or deterred from accessing a basic public education simply because of their immigration status. *Id.* We have previously highlighted for this Council the constitutional problems with allowing TPD to question juveniles about their immigration status. On November 13, 2013, the ACLU submitted detailed testimony to this Council, describing our concerns with TPD immigration policies and practices and providing twenty recommendations for policy reforms to mitigate the harm of SB 1070 and reduce the risk of unconstitutional police practices in Tucson. Among our recommendations is ensuring that police practices do not interfere with the right of all children to access a public education regardless of their immigration status:

Any policy or practice that would significantly interfere with the exercise of the right to an elementary public education runs afoul of well-

¹ See Darren DaRonco, *Immigration Issue Delays Program to Put Cops In Schools*, ARIZ. DAILY STAR, Sept. 24, 2014, available at: <http://bit.ly/1nBILFr>.

established legal precedent. See *Plyler v. Doe*, 457 U.S. 202 (1982); *Hispanic Interest Coalition of Alabama v. Governor of Alabama*, 691 F.3d 1236, 1247 (11th Cir. 2012) (“We are of the mind that an increased likelihood of deportation or harassment upon enrollment in school significantly deters undocumented children from enrolling in and attending school, in contravention of their rights under *Plyler*.”)

(A copy of the ACLU’s November 13, 2013 testimony is attached for reference.)

Schools play a fundamental role in our communities. Permitting SROs to question students about their immigration status will undoubtedly deter undocumented children from attending school and decrease the likelihood of students seeking aid from an SRO, among other chilling effects on students, their families, and the community as a whole. Allowing such a policy would clearly run afoul of the Equal Protection Clause of the Fourteenth Amendment, as articulated in *Plyler* and recently reaffirmed by the Eleventh Circuit. Cf. U.S. Dept. of Justice, U.S. Dept. of Education, *Dear Colleague Letter: School Enrollment Procedures*, May 8, 2014, available at: <http://www.justice.gov/crt/about/edu/documents/plylerletter.pdf>.

Further, any policy that permits SROs to question students about their immigration status invites prolonged and unlawful detentions in violation of the Fourth Amendment. One such case was reported to us by the family of a 15-year-old Sunnyside High School student who was questioned by an SRO regarding his immigration status, which the student refused to provide. After this interrogation, the SRO arrested the student and drove him from the school to a nearby Circle K, where he handed him over to Immigration and Customs Enforcement (ICE) agents. Those agents held the young man for several hours before finally releasing him. No city or state criminal charges were pursued against this young man and he has since obtained Deferred Action for Childhood Arrivals (DACA) status. As long as SROs can question students about immigration status, more students are at risk of being unconstitutionally detained, and litigation may become necessary to prevent such detentions.

At the September 23rd Council meeting, Attorney Rankin misstated current TPD policy, claiming that it does not allow questioning of any juvenile about his or her immigration status unless immigration status is directly “related” to an issue in an underlying investigation. This vague limitation is nowhere to be found in TPD’s General Orders, however, and we are not aware of any such TPD policy.² In fact, the General Orders grant officers, including SROs, broad authority to ask juveniles about immigration status, which would violate the Constitution.

² Tucson Police Department, *General Orders: Volume 2 General Operating Procedures*, last rev’d Dec. 18, 2013, available at: <http://police.tucsonaz.gov/files/police/general-orders/2300IMMIGRATION.pdf>.

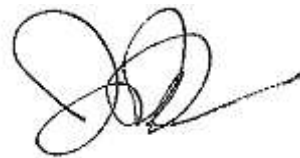
We urge you once again to adopt a policy that looks not to state law – Arizona’s anti-immigrant SB 1070 – but rather to the U.S. Constitution, which is controlling, and prohibit SROs from questioning students about their immigration status in any circumstance.

We also urge you to revisit the many other recommendations submitted by the ACLU in November, the majority of which have not been addressed by this Council or by TPD. The notion that this Council is powerless to effect meaningful policy changes for the benefit of the Tucson community is plainly false – as this Council demonstrated with several unanimous resolutions last November. We encourage you to follow through on those resolutions by pursuing additional reforms to realize the promise of Tucson as an “Immigrant Welcoming City.”

Finally, we note that there are additional reasons to be concerned with the use of SROs in Tucson schools. Nationwide, school districts’ increased reliance on police rather than teachers and administrators to maintain discipline has led to a sharp increase in school-based arrests, despite large decreases in school-based crime.³ We urge you to review the extensive literature regarding SROs’ role in the school-to-prison pipeline, including policy recommendations for limiting any negative impacts associated with SROs in schools.

If you have any questions, please contact me at (520) 344-7857 or jlyall@acluaz.org.

Sincerely,



James Lyall
Staff Attorney
ACLU of Arizona

Cc: Chief of Police Roberto Villaseñor, Tucson Police Department
Tucson City Attorney Mike Rankin
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Michael Hicks, TUSD Governing Board Member
Cam Juárez, TUSD Governing Board Member
Dr. Mark Stegeman, TUSD Governing Board Member
Susan Zibrat, AUSD Governing Board President

³ See e.g., Robin L. Dahlberg, *Arrested Futures: The Criminalization of School Discipline in Massachusetts’ Three Largest School Districts*, ACLU, Spring 2012, available at: https://www.aclu.org/files/assets/maarrest_reportweb.pdf; ACLU, *School-to-Prison Pipeline: Fact Sheet*, available at: https://www.aclu.org/files/images/asset_upload_file966_35553.pdf.

Deanna M. Day, AUSD Governing Board Vice President
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Jo Grant, AUSD Governing Board Member



TUCSON CITY COUNCIL HEARING
Testimony of James Lyall
Staff Attorney, ACLU of Arizona
November 13, 2013

Thank you for the opportunity to discuss Tucson Police Department (“TPD”) policy as it relates to Arizona Senate Bill 1070 (“SB 1070”), and the impact of current TPD policies and practices on civil rights, community trust, and public safety. The ACLU works to preserve the individual rights and liberties that the Constitution and laws of the United States guarantee everyone in this country. The ACLU of Arizona is a leading civil rights advocacy organization in the state with over 6,000 supporters.

The ACLU first presented its concerns about TPD policy and SB 1070 to this City Council a little more than one year ago, on September 25, 2012. That hearing was held shortly after Tucson declared itself an “Immigrant Welcoming City,”¹ and one week after Section 2(B) – the so-called “papers please” provision of SB 1070 – first went into effect. At that time, we identified clear constitutional problems with SB 1070, including Fourth Amendment concerns that individuals would be unlawfully stopped and detained solely for the purpose of investigating immigration status, as well as concerns that the law would lead to racial profiling in violation of the Fourteenth Amendment.

We also identified problems with a number of TPD policies, including General Order 2119.1, which instructs officers on procedures for contacting immigration officials.² In particular, we objected to the General Order’s “cite and release” provisions, which allow for transportation of individuals to U.S. Customs and Border Protection (“CBP”) custody, and instruct officers to detain individuals for a “reasonable period of time” while awaiting response from CBP.³ These provisions fail to make clear that prolonging *any* stop solely for the purpose of investigating immigration status violates the Fourth Amendment. We testified that that these policies permit “exactly the type of unconstitutional scenario” contemplated by the Supreme Court’s decision in *Arizona v. United States*⁴ and by Chief Villaseñor’s statements in opposition to SB 1070.⁵

Additionally, we noted our concern that TPD policy does not prohibit immigration-related inquiries of crime victims and witnesses, even though SB1070 specifically contemplates and allows for such a policy. We cited prominent policing organizations including the Major Cities Chiefs Police Association and the Police Executive Research Forum for the simple proposition that individuals who “believe their immigration status to be subject to question would have little reason to assist the police to solve very serious crimes—against themselves or against

¹ See Resolution 21944, adopted by Tucson’s Mayor and City Council, August 7, 2012, available at <http://sgpp.arizona.edu/sites/sgpp.arizona.edu/files/1070approved.pdf>

² Tucson Police Department General Orders, available at: <http://cms3.tucsonaz.gov/police/general-orders>

³ “If the arrestee is to be cited and field released and the officer reasonably suspects that person is undocumented, CBP may be requested to respond or the arrestee may be transported by the officer to CBP. If awaiting CBP response, the arrestee shall only be detained for a reasonable period of time, based on call load and staffing. If CBP is unable to respond within a reasonable time, the person shall be cited and field released.” General Order 2119.1. Note that this language is in direct conflict with General Order 2335: “If the officer is unable to obtain information about the person’s immigration status from ICE/CBP, then the officer shall release the detainee without delay...The Ninth Circuit Court of Appeals has held that Arizona officers do not have the authority to transport a person solely for a federal civil violation.”

⁴ See *Arizona v. United States*, 132 S.Ct. 2492, 2509 (2012) (“Detaining individuals solely to verify their immigration status would raise constitutional concerns.”)

⁵ See *Valle del Sol v. Whiting*, 2012 WL 8021265 (D. Ariz. Sept. 5, 2012); Declaration of Roberto Villaseñor, ¶9, available at http://cms3.tucsonaz.gov/files/ward6/7-24-12sb1070.tpd_chief_.pdf

lawful immigrants and U.S. citizens—once they know that their involvement will invariably trigger police scrutiny of their immigration background.”

We went on to describe complaints the ACLU had received – prior to SB 1070 having gone into effect – about TPD officers questioning the immigration status of Tucson’s Latino residents. These included reports that officers did not provide reasons for stops and contacted Border Patrol immediately after stops were made. Many involved rarely enforced violations such as failure to use a bicycle light, or minor traffic infractions, suggesting selective and potentially discriminatory policing. We also described Latino motorists who were detained for failure to provide identification, even though police have discretion to cite and release individuals in those situations, as well as individuals not suspected of any crime who were nonetheless questioned as to immigration status or asked to provide identification.

Finally, we submitted a series of recommendations for how the City of Tucson and TPD could implement policies consistent with the Supreme Court’s interpretation of SB1070 while respecting constitutional protections afforded to all and preserving community trust. These included revising TPD policy to clearly prohibit officers from extending stops to investigate immigration status, and assuring the community that individuals can safely report crime without fear of being questioned about immigration status, among other recommendations.

In the year since Tucson adopted its Immigrant Welcoming City resolution, there have been several significant developments. First, soon after the ACLU presented its policy recommendations to this City Council, we were informed that TPD was unlikely to adopt any of them. Subsequently, in June 2013, TPD’s Arrest Policies were revised, but without changes to the problematic policies we and other community members had identified. Meanwhile, the ACLU and other organizations have continued to document cases of discriminatory policing and prolonged detention by local law enforcement in Tucson. Reports include Latino residents stopped for selectively enforced violations, individuals whose stops were extended solely for the purpose of conducting immigration investigations, and residents who contacted TPD for assistance only to be questioned about their immigration status. Several recent, high profile incidents have highlighted the community’s outrage over these practices.

A recent University of Illinois study surveyed Latinos regarding their perceptions of police in light of local police involvement in immigration enforcement.⁶ More than 40 percent of Latinos and 70 percent of undocumented immigrants surveyed reported they are less likely to contact police if they are the victim of a crime specifically because local police are increasingly involved in immigration enforcement.⁷ This sentiment was shared by 28 percent of US-born Latinos, who fear that police officers will inquire into their status or that of people they know.⁸ When asked how often police officers stop Latinos without cause, 62 percent said very or somewhat often.⁹ The study affirms what law enforcement authorities have long warned: when communities do not trust the police, victims of crime have no recourse, witnesses do not report crime, and as a result, the entire community is less safe. This is no abstract concern. For example, the ACLU recently documented the case of a U Visa recipient who called TPD for assistance and who, along with her family members, was subsequently interrogated regarding immigration status. Stories like this one are the direct result of current TPD policy, and clearly not required by SB 1070.

Other jurisdictions in Arizona and around the country have taken affirmative steps to address the harm resulting from local police involvement in immigration enforcement and to safeguard the trust of their communities. For example, Flagstaff Police Department Special Order 12-030 explicitly bars officers from inquiring into the immigration status of crime victims and witnesses and individuals complaining about officer misconduct.¹⁰ Even

⁶ Nik Theodore, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, University of Illinois at Chicago, May 2013, available at

http://www.uic.edu/cuppa/gci/documents/1213/Insecure_Communities_Report_FINAL.pdf

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ Flagstaff Police Department Special Order 12-030, September 25, 2012, available at

<http://www.flagstaff.az.gov/DocumentCenter/View/40866> (“Officers shall not make immigration status inquiries during

the Maricopa County Attorney's Office has declared that under SB 1070, police should not ask crime victims or witnesses about their immigration status because it could hinder an investigation.¹¹ These policies do not violate SB 1070 and should be adopted in Tucson immediately. Additionally, a growing number of municipalities around the country are revising their policies regarding ICE detainer requests¹² as it has become clear the vast majority of individuals swept up through Secure Communities programs do not meet ICE's own enforcement priorities.¹³ These programs, which ICE now acknowledges are optional,¹⁴ distract local law enforcement from more urgent tasks while imposing significant costs on cash strapped cities and towns.¹⁵ Other cities have created "city IDs,"¹⁶ to provide all residents with identification sufficient to confirm their identity in encounters with police, while others have revised their car impoundment policies.¹⁷ These are just some examples of the range of strategies local governments are pursuing to restore community trust and protect public safety. SB 1070 does not prevent the adoption of similar initiatives in Tucson.

The past year has also witnessed a series of state and federal court decisions that have reiterated the strict constitutional limitations on local law enforcement involvement in immigration enforcement articulated by the Supreme Court in *Arizona v. United States*.¹⁸ In May 2013, Federal District Court Judge Murray Snow ruled that Sheriff Joe Arpaio and the Maricopa County Sheriff's Office ("MCSO") – on whose policies and practices SB 1070 was modeled – had engaged in a pattern and practice of systemic racial profiling in violation of the Fourth and Fourteenth Amendments.¹⁹ Judge Snow identified numerous unconstitutional police practices, including the unlawful use of race as a factor in forming reasonable suspicion,²⁰ the investigation of all vehicle occupants' identities without individualized reasonable suspicion, and the prolonging of stops of those occupants in violation of the Fourth Amendment.²¹ These are many of these same practices that continue to be reported in Tucson.

consensual contacts or with victims and witnesses of crime... Individuals who contact FPD to make citizen complaints on officers will not be asked their immigration status.")

¹¹ See Bob Ortega, *Maricopa County: When Reporting Crimes, Don't Fear Migrant-Status Check*, Arizona Republic, Oct. 25, 2013, available at <http://www.azcentral.com/news/politics/articles/20131024maricopa-county-reporting-crimes-dont-fear-migrant-check.html>

¹² Over the past several months, cities like New Orleans, New York, Newark, and San Francisco have all revised their policies regarding ICE detainer requests. See e.g., Newark Police Department Director's Memorandum 13-0249, July 24, 2013, available at <http://www.notonemoredeportation.com/wp-content/uploads/2013/08/Newark-PD-Order.pdf>; see also, Lee Romney, *San Francisco Officials Vote to Reject Most Immigration Holds*, LA TIMES, September 25, 2013, available at <http://www.latimes.com/local/lanow/la-me-ln-sf-immigration-holds-20130925.0,7025089.story#axzz2j8zLj2kK>; Daniel C. Vock, *Backlash Grows Against Federal Immigration Screening in Jails*, USA Today, September 25, 2013, available at <http://www.usatoday.com/story/news/nation/2013/09/25/backlash-grows-against-federal-immigration-screening-at-jails/2868507/>

¹³ TRAC, *New ICE Detainer Guidelines Have Little Impact*, October 1, 2013, available at <http://trac.syr.edu/immigration/reports/333/>

¹⁴ See Melissa Keane et al, *Issue Brief, Immigration Detainers and Local Discretion*, April 2011, available at https://www.aclunc.org/sites/default/files/detainers_issue_brief.pdf

¹⁵ *What ICE Isn't Telling You About Detainers*, ACLU Immigrant Rights Project Issue Brief available at https://www.aclu.org/files/assets/issue_brief_-_what_ice_isnt_telling_you_about_detainers_0.pdf;

¹⁶ See, e.g., Henry Grabar, *L.A. Moves Forward with Its Own Immigration Reform*, The Atlantic Cities, November 13, 2012, available at <http://m.theatlanticcities.com/jobs-and-economy/2012/11/l-moves-forward-its-own-immigration-policy/3854/>

¹⁷ See e.g., Ryan Gabrielson *Oakland Joins Cities That Won't Impound at DUI Checkpoints*, Center for Investigative Reporting, January 26, 2011, available at <http://californiawatch.org/dailyreport/oakland-joins-cities-won-t-impound-dui-checkpoints-8262>

¹⁸ See *Santos v. Frederick County Board of Commissioners*, 725 F.3d 451 (4th Cir. 2013); *Melendres v. Arpaio*, 695 F.3d 990, 1001 (9th Cir. 2012); *Melendres v. Arpaio*, 2013 WL 2297173 (D. Ariz., May 24, 2013); *Buquer v. City of Indianapolis*, 2013 WL 1332158, at *10-11 (S.D. Ind. Mar.28, 2013); *Ramirez-Rangel v. Kitsap County*, No. 12-2-09594-4, (Wash. Super. Ct. August 16, 2013).

¹⁹ *Melendres* 2013 WL 2297173, at 60-63.

²⁰ *Id.* at 64, 67 ("[U]se of Hispanic ancestry or race as a factor in forming reasonable suspicion that persons have violated state laws relating to immigration status violates the Fourth Amendment...[U]se of Hispanic ancestry or race as a factor in forming reasonable suspicion that persons have violated state laws relating to immigration status violates the Equal Protection Clause of the Fourteenth Amendment.")

²¹ *Id.* at 3. ("[O]fficers, as a matter of practice, investigate the identities of all occupants of a vehicle when a stop is made, even without individualized reasonable suspicion. . . . When the deputies have no adequate reasonable suspicion that the individual

On October 2, 2013, Judge Snow issued an order containing numerous requirements for MCSO to reform its practices.²² For example, Judge Snow ordered the Sheriff's Office to revise its policies to ensure bias free policing, including requiring that MCSO:

- specify that the presence of reasonable suspicion or probable cause to believe an individual has violated a law does not necessarily mean that an officer's action is race-neutral;²³
- prohibit Deputies from extending the duration of any traffic stop longer than the time that is necessary to address the original purpose for the stop and/or to resolve any apparent criminal violation for which the Deputy has or acquires reasonable suspicion or probable cause to believe has been committed or is being committed;²⁴
- provide Deputies with guidance on factors to be considered in deciding whether to cite and release an individual for a criminal violation or whether to make an arrest;²⁵
- prohibit officers from detaining any individual based on actual or suspected "unlawful presence," without something more;²⁶
- prohibit officers from initiating a pretextual vehicle stop where an officer has reasonable suspicion or probable cause to believe a traffic or equipment violation has been or is being committed in order to determine whether the driver or passengers are unlawfully present;
- prohibit Deputies from relying on a suspect's speaking Spanish, or speaking English with an accent, or appearance as a day laborer as a factor in developing reasonable suspicion or probable cause to believe a person has committed or is committing any crime, or reasonable suspicion to believe that an individual is in the country without authorization;²⁷
- prohibit Deputies from transporting or delivering an individual to ICE/CBP custody from a traffic stop unless a request to do so has been voluntarily made by the individual;²⁸
- require that, before any questioning as to alienage or immigration status or any contact with ICE/CBP is initiated, an officer check with a Supervisor to ensure that the circumstances justify such an action under MCSO policy and receive approval to proceed. Officers must also document, in every such case, (a) the reason(s) for making the immigration-status inquiry or contacting ICE/CBP, (b) the time Supervisor approval was received, (c) when ICE/CBP was contacted, (d) the time it took to receive a response from ICE/CBP, if applicable, and (e) whether the individual was then transferred to ICE/CBP custody.²⁹

occupants of a vehicle are engaging in criminal conduct to justify prolonging the stop to investigate the existence of such a crime, the extension of the stop violates the Fourth Amendment's prohibition against unreasonable seizures.")

²² See *Id.*, Supplemental Permanent Injunction Judgment Order, October 2, 2013, available at:

https://www.aclu.org/sites/default/files/assets/2013.10.02.606_supplemental_permanent_injunction_judgment_order.pdf

²³ *Id.* at 14. Compare with TPD General Order 2332: "In establishing whether there is reasonable suspicion to believe a person is an alien and unlawfully present in the U.S., an officer shall not consider the detainee's race, color or national origin, except that an officer may ask about a person's citizenship after arrest or in other appropriate circumstances such as when it is part of a suspect description".

²⁴ *Id.* at 15. Compare with TPD General Order 2119.1 which allows for extending detentions "a reasonable time." That language clearly conflicts with General Order 2335: "If the officer is unable to obtain information about the person's immigration status from ICE/CBP, then the officer shall release the detainee without delay." Additionally, General Order 2351 does not specify a time limit in awaiting ICE/CBP responses: "Once verification of immigration status is completed, the person is eligible to be released, subject to other legal requirements (such as an arrested person seeing a magistrate or signing a citation in lieu of detention)."

²⁵ *Id.* at 16.

²⁶ *Id.* at 17.

²⁷ *Id.* Compare with TPD General Order 2334, which currently identifies as one factor in forming reasonable suspicion of unlawful presence, "Significant difficulty speaking English." Another lists "Location," including places "where unlawfully present aliens are known to work." (Note that the Ninth Circuit Court of Appeals recently upheld the injunction of SB 1070 Sections 5(A) and (B) which target day laborers.)

²⁸ *Id.* at 18. Compare with TPD General Order 2119.1 which allows for transportation to CBP/ICE custody.

²⁹ *Id.* Compare with TPD General Order 2300, which currently states, "Officers are encouraged to contact supervisors when necessary" or if there is "deviation" from policy.

Judge Snow also ordered MCSO to improve its training, oversight, and enforcement policies, collect detailed stop data, and participate in community outreach efforts.³⁰ These are sensible policies that other jurisdictions should embrace outside of litigation. None are adequately addressed by current TPD policy.

Section 2(B) has now been in effect for more than a year, yet numerous problems with TPD's policies and practices remain. In response to mounting community outrage, some claim that TPD's "hands are tied" and are quick to point out that the City can be sued if it fails to comply with SB 1070. However, the risk of litigation resulting from failure to prevent discriminatory policing is no less real. Indeed, whereas no Arizona municipality has been sued for failure to comply with SB 1070, multiple Arizona law enforcement entities have faced litigation for discriminatory practices, including MCSO, DPS, and most recently, South Tucson Police Department.

Moreover, the claim that TPD's hands are tied is simply false. In fact, as detailed below, there is much that TPD can do without running afoul of SB 1070 that it has not done. It also ignores longstanding complaints of discriminatory policing, which predate SB 1070. Notably, as its relationship with the immigrant community has deteriorated over the past year, TPD has not proposed any significant changes in policy, training, or community outreach to mitigate the harm of SB 1070. Coming from an entity that recognized the negative implications of SB 1070 long ago such inaction is striking.

The ACLU vigorously opposed SB 1070 when it was introduced and that fight continues in the courts today. We continue to believe that Section 2(B) is unconstitutional because it compels local police to engage in immigration enforcement and results in unlawful and discriminatory police practices. At the same time, it is precisely because the law raises such grave constitutional concerns and has so badly undermined the public's trust of law enforcement that TPD and the City of Tucson must do more to prevent constitutional violations and restore community trust, and not compound the damage further. Reforms can and must include the adoption of sensible policies to promote community trust and public safety; revision of vague and inconsistent TPD policies currently on the books; enhancement of oversight, accountability, and transparency mechanisms within TPD, including improved data collection; and the development of new initiatives that TPD and the City can undertake to address the concerns that community members have presented to this Council over the past several weeks.

Tucson should be proud of past efforts opposing SB 1070 and in support of the immigrant community. This city's leadership has been outspoken in its criticism of SB 1070, and last year's Immigrant Welcoming City resolution was an important step towards addressing the damage the law does to Tucson and the State of Arizona. However, much more needs to be done to bring substance to that important resolution and to make its promise a reality.

The ACLU of Arizona offers the following twenty (20) recommendations for sensible policies to ensure the rights of all Tucson residents are upheld:

- 1) TPD must prohibit officers from questioning crime victims and witnesses about their immigration status. TPD General Order 2322 currently leaves the ability to question crime victims and witnesses to officer discretion. This policy has had a devastating impact on community trust and continues to jeopardize public safety since many individuals will not contact law enforcement if they fear that they or their loved ones may be questioned about immigration status. SB 1070 specifically provides that police do not have to investigate immigration status if doing so "may hinder or obstruct an investigation." It is clear that making immigration inquiries of crime victims or witnesses risks hindering and obstructing underlying investigations, as other Arizona municipalities including Flagstaff and Maricopa County have already recognized.³¹ SB1070 does not prohibit TPD from adopting this commonsense policy.³²

³⁰ See *Melendres*, Supplemental Permanent Injunction Judgment Order.

³¹ See Flagstaff Police Department Special Order 12-030; Bob Ortega, *Maricopa County: When Reporting Crimes, Don't Fear Migrant-Status Check*, Arizona Republic, Oct. 25, 2013, available at <http://www.azcentral.com/news/politics/articles/20131024maricopa-county-reporting-crimes-dont-fear-migrant-check.html>

³² TPD itself acknowledges this exception in General Order 2331,³² which provides that officers "should consider when or whether to investigate immigration status in light of the need for suspect, victim and witness cooperation in an investigation."

- 2) TPD must prohibit immigration inquiries of individuals who contact TPD to file complaints regarding officer misconduct. As with crime victims and witnesses, allowing officers to question complainants regarding immigration status may hinder or obstruct an investigation. For TPD’s officers to be subject to effective oversight and accountability, all Tucson residents must feel safe in reporting abuse to TPD. Such a policy would also protect the city from liability and accusations of deliberate indifference to civil rights problems. A policy allowing all residents to report misconduct without fear has already been adopted in Flagstaff and should be adopted here.³³

- 3) TPD must clearly prohibit officers from extending any stop or detention solely to await a CBP or ICE response regarding the investigation of immigration status. Extending stops solely for immigration investigations is unlawful.³⁴ Chief Villaseñor has stated that “[u]nder Section 2(B) if we cannot get immediate confirmation from federal officials of the immigration status of these suspects, we will have to extend their detentions in the field until we get a status determination from federal officials, or book them into jail to await these results. Either situation *will result* in extended detention of thousands of individuals—even if it is for brief periods of time.”³⁵ (emphasis added) The Supreme Court has since stated and the lower courts have reiterated that such extended detentions are unlawful, yet TPD has not altered its policies and practices to prevent constitutional violations and its conflicting policies are unclear on this key point. TPD General Order 2119.1 allows for extending detentions “a reasonable time.” By contrast, General Order 2335 provides, “If the officer is unable to obtain information about the person’s immigration status from ICE/CBP, then the officer shall release the detainee without delay.” General Order 2351 does not specify a time limit or provide sufficient guidance for officers awaiting ICE/CBP responses: “Once verification of immigration status is completed, the person is eligible to be released, subject to other legal requirements (such as an arrested person seeing a magistrate or signing a citation in lieu of detention).” These contradictory and vague policies fail to provide clear guidance to officers to prevent unlawful extended detentions and must be revised.

- 4) TPD must clearly prohibit transportation of individuals to CBP or ICE facilities when officers lack the legal authority to do so. Transportation to CBP custody necessarily extends the duration of the stop, which is unlawful. This point is reflected in Judge Snow’s recent Order prohibiting MSCO from transporting individuals to ICE custody.³⁶ The plain language of General Order 2119.1 allowing for such transportation if a TPD officer “reasonably suspects” an individual is undocumented as currently written is in conflict with the law as well as with TPD General Order 2335, which acknowledges, “The Ninth Circuit Court of Appeals has held that Arizona officers do not have the authority to transport a person solely for a federal civil violation.” TPD must clarify this inconsistency and clearly prohibit transportation to CBP or ICE custody based merely on suspicion or knowledge of a civil immigration violation.

- 5) TPD must 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. A number of jurisdictions require officers to contact supervisors whenever someone wants to file a complaint of misconduct. Likewise, many jurisdictions require supervisors to respond to the field whenever their officers use force. In light of the serious problems presented by SB 1070, requiring supervisor contact and

However, General Order 2331 like Order 2322 permits a level of officer discretion that does not sufficiently assure crime victims and witnesses that it is safe to call the police, and unnecessarily compromises TPD’s mission and the safety of all Tucson residents.

³³ See Flagstaff Police Department Special Order 12-030. By contrast, Tucson’s Citizen Police Advisory Review Board references “citizen complaints” only.

³⁴ See *Arizona v. United States*, 132 S.Ct. at 2509 (“Detaining individuals solely to verify their immigration status would raise constitutional concerns.”)

³⁵ Declaration of Roberto Villaseñor at ¶9

³⁶ See *Melendres*, Supplemental Permanent Injunction Judgment Order at 18 (“prohibit Deputies from transporting or delivering an individual to ICE/CBP custody from a traffic stop unless a request to do so has been voluntarily made by the individual.”)

documentation would show that TPD takes these encounters seriously, and reduce the risk of liability resulting from potentially unlawful practices.³⁷ TPD's Immigration Policy (General Order 2300) currently "encourages" contact with supervisors "when necessary" or if there is "deviation" from policy. This is insufficient. Whenever officers act pursuant to SB 1070, communication with supervisors and robust documentation should be mandatory.

- 6) TPD must revise General Order 2334, which identifies factors to be used in forming reasonable suspicion of unlawful presence. General Order 2334 lists as one factor, "Significant difficulty speaking English." Another is "Location," including places "where unlawfully present aliens are known to work." These factors are clearly discriminatory. Judge Snow has prohibited MCSO deputies from "relying on a suspect's speaking Spanish, or speaking English with an accent, or appearance as a day laborer as a factor in developing reasonable suspicion or probable cause to believe a person has committed or is committing any crime, or reasonable suspicion to believe that an individual is in the country without authorization."³⁸ The Ninth Circuit Court of Appeals recently upheld the injunction of SB 1070 Sections 5(A) and (B) which target day laborers. Meanwhile, the ACLU has serious concerns regarding numerous TPD arrests of individuals in the vicinity of Southside Workers Center, and the selective questioning of Latino residents by TPD in general. TPD must revise General Order 2334 to prevent officers from relying on improper factors in forming "reasonable suspicion."
- 7) TPD must prohibit officers from questioning juveniles about immigration status outside the presence of an attorney. The Supreme Court has long recognized the risk that juvenile suspects will falsely confess during police interrogations.³⁹ Research demonstrates that when in police custody, many juveniles do not fully understand or appreciate their legal rights or the options available to them. There is nationwide movement towards greater due process protections for juveniles in the context of police interrogations, including the right to have an attorney present during questioning. In addition to prohibiting questions of juveniles outside the presence of an attorney, TPD should revise TPD General Order 2119.1, which currently directs officers to follow "all existing policies concerning the arrest of juveniles, with the addition of notifying CBP of all pertinent information concerning the juvenile *and their family*." (emphasis added) This policy further undermines community trust and is in no way required by SB 1070. As with victims and witnesses of crime, the parents and family members of detained juveniles should not be questioned regarding their immigration status because of the risk of hindering an investigation.
- 8) TPD must prohibit officers from questioning students about immigration status. Any policy or practice that would significantly interfere with the exercise of the right to an elementary public education runs afoul of well-established legal precedent. See *Plyler v. Doe*, 457 U.S. 202 (1982); *Hispanic Interest Coalition of Alabama v. Governor of Alabama*, 691 F.3d 1236, 1247 (11th Cir. 2012) ("We are of the mind that an increased likelihood of deportation or harassment upon enrollment in school significantly deters undocumented children from enrolling in and attending school, in contravention of their rights under *Plyler*.") TPD General Order 2119.1 makes no exception for students and affirmatively directs officers to take actions that in the school context may result in constitutional violations.
- 9) TPD should prohibit officers from requiring passengers and pedestrians to provide identification when officers lack reasonable suspicion of an immigration violation or crime. Passengers and pedestrians are *not* required to carry identification under state law. TPD must clearly prohibit officers from detaining passengers and pedestrians not suspected of crime for failure to show identification, which is not a crime, or detaining such individuals solely to investigate immigration status.

³⁷ Judge Snow ordered MCSO to "require that, before any questioning as to alienage or immigration status or any contact with ICE/CBP is initiated, an officer check with a Supervisor to ensure that the circumstances justify such an action under MCSO policy and receive approval to proceed. Officers must also document, in every such case, (a) the reason(s) for making the immigration-status inquiry or contacting ICE/CBP, (b) the time Supervisor approval was received, (c) when ICE/CBP was contacted, (d) the time it took to receive a response from ICE/CBP, if applicable, and (e) whether the individual was then transferred to ICE/CBP custody." See *Melendres*, Supplemental Permanent Injunction Judgment Order.

³⁸ *Id.*

³⁹ See e.g., *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011)

- 10) TPD should require cite and release wherever possible and absent exceptional circumstances. In situations where officers currently have discretion to cite and release, TPD policy should encourage cite and release over booking. TPD should provide guidance for officers to identify when cite and release is appropriate, as Judge Snow has required of MCSO.⁴⁰
- 11) TPD should require that when officers do contact immigration officials they call ICE, and should prohibit officers from calling CBP to the scene of roadside stops where the risk of unlawful, extended detentions is greater. General Order 2335 directs officers to “contact ICE/CBP via TPD TWX.” In practice, TPD often calls CBP to the scene of roadside stops, which usually results in detention by CBP. This practice is in conflict with DHS guidance that DHS personnel in Arizona – which includes both ICE and CBP – should only respond to the scene of a traffic stop in cases of individuals who meet DHS enforcement priorities.⁴¹ Sometimes CBP does not arrive to the scene of the stop for an extended period. If TPD officers are left with discretion to contact multiple agencies, by a variety of methods, the risk of unlawful, extended detentions is greater. TPD should direct officers to follow a consistent procedure of contacting ICE –not CBP – for immigration status verification; if such verification risks extending the stop, the individual must be released, as required by law.
- 12) TPD must allow licensed third parties to retrieve vehicles where discretion exists to allow it to be parked or driven away. A vehicle should not be impounded if it can safely be driven or parked elsewhere. *Miranda v. City of Cornelius*, 429 F.3d 858, 866 (9th Cir. 2005) “An officer cannot reasonably order an impoundment in situations where the location of the vehicle does not create any need for the police to protect the vehicle or to avoid a hazard to other drivers.”) TPD regularly impounds vehicles at roadside stops, even when licensed drivers are on hand to drive the car safely. Because the loss of a vehicle can place a serious and costly burden on individuals and their families, Tucson should join the growing number of municipalities limiting vehicle impoundments.
- 13) TPD must develop better data collection and tracking mechanisms, including regular audits of stop data, to more easily assess critical information, including the race of individuals stopped, the location, duration and basis for the stop, the results of any search, and the outcome of the stop including any arrests, and referrals to federal immigration authorities by TPD pursuant to SB 1070. TPD policy should provide for regular review of these records by TPD supervisors and/or commanders to identify any potential problems. These records should also be available for public inspection (with identifying information redacted). Such data is currently not collected or stored in an easily retrievable and sortable manner. Without improved data collection, TPD cannot adequately assess whether its officers are properly adhering to departmental policies or the strict limits on police involvement in immigration enforcement.
- 14) TPD should provide this City Council with aggregate monthly stop data sufficient to show the number, location, duration, and reason for stops and arrests, as well as the race or ethnicity of individuals stopped and/or arrested, whether any searches were conducted, whether the stop resulted in a referral to immigration authorities, and other relevant information necessary for determining whether police practices conform with TPD policy and constitutional requirements. The ACLU recently submitted a Public Records Request to TPD to obtain this data, but the City and TPD should be collecting and reviewing this critical information regularly. The City collects aggregate data from other agencies in order to assess practices and performance and should do the same for TPD.
- 15) TPD and the City should establish formal, periodic reviews of TPD policy to account for changes in case law. Numerous cases involving interpretations of *Arizona v. United States* have been handed down in recent months, including a Ninth Circuit Court of Appeals decision upholding the injunction of SB 1070

⁴⁰ *Id.* at 16 (“provide Deputies with guidance on factors to be considered in deciding whether to cite and release an individual for a criminal violation or whether to make an arrest.”)

⁴¹ See Mike Ahlers, *Official: Obama administration will enforce its priorities, not Arizona’s*, CNN, June 25, 2012, available at <http://www.cnn.com/2012/06/25/politics/immigration-administration-reaction/>

Sections 5(A) and (B) which target day laborers (see prior recommendation re: General Order 2334).⁴² TPD must promptly revise its policies to reflect important developments in the law.

- 16) TPD must enhance officer training programs related to immigration enforcement. Because the law in this area is complex, and because sound immigration enforcement practices are essential for effective policing and public safety, TPD should expand and update its officer training related to immigration enforcement. Any changes in the law or in TPD policy pursuant to these or other recommendations must be incorporated in training materials and all pertinent operational instructions.
- 17) TPD should revise its complaint procedures to be more accessible. To make its complaint system open and accessible to everyone, TPD should accept complaints in all forms (verbal, written, anonymous, and third party complaints, and complaints in languages other than English) and publicize and explain improved complaint procedures to the public.
- 18) TPD must initiate more affirmative efforts to engage the community. At a minimum, the Chief of Police should attend all task force meetings, and within 30 days should submit a plan to the City Council for affirmative community outreach efforts to notify community members of any and all changes in TPD immigration-related policies.
- 19) TPD should be required to articulate its position in writing, including explaining why it can or cannot adopt these recommendations. Precisely because SB 1070 raises such grave constitutional concerns and undermines the community trust on which good policing relies, when confronted with longstanding complaints of civil rights violations it is insufficient for TPD to rely upon SB 1070 as an excuse for failing to take substantive action. The burden should not be on the community to explain why this is so. Rather, the City Council should instruct TPD to submit a position statement on each of these recommendations within 30 days, a detailed implementation plan within 60 days, and schedule further hearings as necessary to try to resolve any continuing differences.
- 20) The City Council should develop a clear plan for addressing the harm to Tucson caused by SB 1070, including directing or participating in legal or policy initiatives to challenge the law and/or mitigate its impact, and schedule further hearings as necessary. The Council should also strengthen the Immigrant Welcoming City task force to timely develop and establish policies for sound community policing. Tucson should look to the example of other cities⁴³ that have adopted relevant policies in recent months, consider additional mechanisms for increased oversight and accountability of TPD, and examine what other policies and programs it can adopt to improve the lives of immigrant residents. There are additional areas where Tucson's immigrant community faces discrimination and abuse, including landlord-tenant issues, unpaid wages, access to services, and other areas. The City of Tucson should follow the lead of other cities by adopting a variety of sensible, concrete programs and policies to realize the promise of an Immigrant Welcoming City.

⁴² See *Santos v. Frederick County Board of Commissioners*, 725 F.3d 451 (4th Cir. 2013); *Melendres v. Arpaio*, 695 F.3d 990, 1001 (9th Cir. 2012); *Melendres v. Arpaio*, 2013 WL 2297173, at *60-63 (D. Ariz. May 24, 2013); *Buquer v. City of Indianapolis*, 2013 WL 1332158, at *10-11 (S.D. Ind. Mar.28, 2013); *Ramirez-Rangel v. Kitsap County*, No. 12-2-09594-4, (Wash. Super. Ct. August 16, 2013).

⁴³ See e.g., Chicago's Office of New Americans:

http://www.cityofchicago.org/city/en/depts/mayor/supp_info/chicago_new_americansplan.html