

**NOPD CONSENT DECREE MONITOR**  
NEW ORLEANS, LOUISIANA



September 22, 2016

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File Number: 37PA-191555

**VIA ELECTRONIC MAIL** (dpmurphy@nola.gov)

Deputy Superintendent Danny Murphy  
Compliance Bureau, New Orleans Police Department  
714 Broad Street  
New Orleans, LA 70119

RE: Policy Approval

Dear Superintendent Murphy:

This letter constitutes confirmation that the Office of Consent Decree Monitor ("OCDM") has reviewed and provided comments on the revised Chapter 41.6.1, Immigration Status. The OCDM has no objection to the policy as revised.

We believe that the revised Chapter 41.6.1, Immigration Status, incorporates all requirements of the Consent Decree and sets forth clear and appropriate rules to guide officer conduct. Our approval is also based on the representation by the Department of Justice that this policy complies with 8 U.S.C. §1373.

We will continue to assess the adequacy of this policy following its implementation. If we identify any concerns following implementation, we will present those concerns to you and the Department of Justice. Additionally, we note that, pursuant to the Consent Decree, NOPD has agreed to review and revise policies and procedures as necessary upon notice of a significant policy deficiency. We also note NOPD's obligation to review this policy after a year of implementation to ensure it "provides effective direction to NOPD personnel and remains consistent with the Agreement, best practices, and current law." Consent Decree at ¶ 8.

We appreciate your team's effort, cooperation, and responsiveness throughout this process. Very truly yours,

David Douglas  
For SHEPPARD MULLIN RICHTER & HAMPTON LLP\*  
2099 PENNSYLVANIA AVE., N.W., SUITE 100  
WASHINGTON, DC 20006

CC: HONORABLE SUSIE MORGAN (VIA ELECTRONIC MAIL)  
EMILY GUNSTON, DEPARTMENT OF JUSTICE (VIA ELECTRONIC MAIL)

Office of the Consent Decree Monitor

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\*Appointed By Order Of The U.S. District Court For The Eastern District of Louisiana



# NEW ORLEANS POLICE DEPARTMENT OPERATIONS MANUAL

## CHAPTER: 41.6.1

### TITLE: IMMIGRATION STATUS

**EFFECTIVE: 02/28/2016**

**REVISED: 09/25/2016**

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#### 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.
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. This policy is to be construed in accordance with 8 U.S.C. §1373(a) which provides "Notwithstanding any other provision of Federal, State, or local law, a Federal, State, or local government entity or official may not prohibit, or in any way restrict, any government entity or official from sending to, or receiving from, [ICE] information regarding the citizenship or immigration status, lawful or unlawful, of any individual."
6. The NOPD shall not engage in, assist, or support immigration enforcement except as follows:
  - In response to an articulated, direct threat to life or public safety; or
  - When such services are required to safely execute a criminal warrant or court order issued by a federal or state judge.

- Sending to ICE, or receiving from ICE, information regarding the citizenship or immigration status of an individual as provided in Paragraph 5.
7. Except as provided in Paragraph 6, members are not permitted to accept requests by ICE or other agencies to support or assist in civil 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.
  8. Nothing in this provision shall prohibit NOPD members from assisting victims or witnesses in obtaining U Visa/T Visas, where appropriate.
  9. 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**

10. 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.
11. Persons are not required to prove their citizenship status. Members shall not request identification for the purpose of determining an individual's citizenship status.
12. 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.

13. 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).

#### **U VISA/T VISA NONIMMIGRANT STATUS**

14. 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.
15. 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**

16. NOPD members shall take no action against an individual in response to an ICE administrative warrant. 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 advise the Member of that fact, and the NOPD Member shall take no further action on the basis of the administrative warrant.
17. If the NOPD NCIC unit cannot determine whether the warrant is administrative or criminal, 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 the member receives verification of an outstanding criminal warrant, normal arrest procedures shall be followed.

### **TRAINING**

18. 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.