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April 30, 2020

Re: NOPD vehicle checkpoints and summonses

Mr. Aronie,

On behalf of the ACLU of Louisiana, the Orleans Parish Prison Reform Coalition, and the Roderick and Solange MacArthur Justice Center, we write to express a concern with two policies and practices of the New Orleans Police Department that we believe to be out of step with Louisiana state law and the Constitution, and that pose a particular danger to vulnerable communities during the COVID-19 public health crisis: NOPD traffic checkpoints and NOPD arrests made in lieu of summonses.

We urge the Office of the Consent Decree Monitor (“OCDM”) to investigate NOPD checkpoints’ compliance with the federal Consent Decree’s provisions related to arrests, stops, searches, and bias-free policing. We similarly urge the OCDM to investigate whether these same Consent Decree provisions are violated by the NOPD’s policy and practice of making arrests in lieu of summonses on many low-level offenses.

NOPD Checkpoints

As you may know, the NOPD recently announced that it will cease conducting vehicle checkpoints that it had employed to ensure seatbelt usage and “to verbally provide information regarding the current stay-at-home order” in New Orleans.¹ We are gratified that NOPD stopped this practice, but we remain concerned that the checkpoints, conducted during the coronavirus pandemic, not only violated the Consent Decree but decreased public safety. We remain concerned that they amounted to a system of investigative stops without reasonable suspicion and were disproportionately conducted in communities of color in a racially discriminatory manner.

We believe that NOPD’s “informational” checkpoints were, in fact, investigatory. First, the NOPD explicitly stated in its own press release that its traffic division would conduct the checkpoints to “monitor seat belt usage by all occupants of automobiles.” In addition, community members reported that officers had been requesting proof of insurance, license, and registration at the stops.

¹ <https://nopdnews.com/post/april-2020/nopd-to-conduct-seat-belt-usage,-informational-veh/>

Finally, public-records requests made to the City for checkpoint-related documents have been denied because they dealt “with investigative information,” relying on La. R.S. 44:3(A)(4)(a), an exemption to Louisiana’s public records law for “investigative records.” These stops are investigatory, not informational.

The federal Consent Decree provides that NOPD officers “may only conduct investigatory stops or detentions where the officer has reasonable suspicion that a person has been, is, or is about to be engaged in the commission of a crime.” ¶ 122. Therefore, an NOPD officer cannot stop a vehicle to then check whether the occupants are wearing seatbelts, obtaining reasonable suspicion after the fact. It also is unclear to us whether the officers have been completing the FICs for every individual stopped, and what inquiries were being made of all vehicle occupants.

Further, community partners have been documenting the checkpoints’ locations—of which the community had not received notice, and which had not been previously published—and that those locations appeared to target areas of the City with concentrated poverty that are majority people of color. It is already well-documented that the coronavirus disproportionately affects Black people.² During this pandemic, NOPD’s choice to target vulnerable communities was not only discriminatory but promoted racial injustice. Under the Consent Decree, NOPD expressly agrees to ensure bias-free policing throughout its programs, initiatives, and activities. ¶ 178.

We believe that the proffered “informational” justification for NOPD’s checkpoints was pretextual. The NOPD’s avowed intention to “verbally provide information regarding the current stay-at-home order” was disingenuous, given that such information was already widely available. Moreover, the City has various other means to disseminate information that are more effective than person-to-person contact between NOPD officers and vehicle occupants. Such checkpoints would be problematic under the best of circumstances; during the current public-health crisis, they actually reduced public safety by requiring increased contact between people who are not of the same household. This was dangerous for officers and residents.

NOPD Failure to Issue Summonses in Lieu of Arrest

NOPD policy (41.8) operates to make arrests the default for most offenses, instead of issuing summonses. This implicates a safety concern for officers and community members, makes NOPD procedure out of compliance with state law, and has the danger to result in biased policing.

The fact that NOPD policy 41.8 mandates arrest instead of summons in the vast majority of offenses and situations is particularly concerning during the current public-health crisis, because each arrest puts community members, NOPD officers, and sheriff’s deputies in danger of contracting COVID-19 during the inevitable physical contact in the booking and arrest process.

² <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/racial-ethnic-minorities.html>

This is unsafe and unnecessary, particularly when state law directs that summonses may be issued in lieu of arrest for many charges.

NOPD policy as currently written runs counter to Code of Criminal Procedure Article 211, which explicitly directs that summonses can be issued in lieu of arrest for people charged with misdemeanors as well as low-level felonies. NOPD Policy 41.8, however, severely restricts the circumstances in which officers can issue summonses, even for misdemeanors—leading to the absurd result that someone charged with simple possession of marijuana must face mandatory arrest and be taken to jail if they have a single prior conviction for obstruction of a public passageway.

The fact that NOPD policy makes arrests the default, instead of summonses, has resulted in a pattern of senseless arrests—mainly of poor individuals and people of color—over the past month for charges including simple possession of marijuana, illegal possession of stolen things, theft of alcoholic beverages from a store, trespass, and theft of toiletries from a store. Arresting people instead of issuing summons for minor charges such as these is irresponsible in light of the pandemic, and it may serve to increase the disparity in the impact COVID-19 has had on poor communities and communities of color.

Further, even when NOPD officers have discretion to issue summonses instead of arrest under current policy, officers are misusing that discretion and performing custodial arrests for misdemeanor charges. Our analysis of a snapshot of arrest data during the pandemic has revealed that there is an even higher racial disparity for arrests made by NOPD when the charge is one for which the officer could have issued a summons in lieu of arrest.

Thank you for your ongoing work monitoring our police department. We hope that you will take all necessary action to investigate whether these practices are consistent with the requirements of the Consent Decree. We believe that they are not.

Sincerely,

Alanah Odoms Hebert
ACLU of Louisiana

Sade Dumas
Orleans Parish Prison Reform Coalition

James Craig and Hannah Lommers-Johnson
Roderick and Solange MacArthur Justice Center

Endorsed by,

Community ReCallers
Power Coalition for Equity and Justice
Justice and Accountability Center of Louisiana
Workers Center for Racial Justice

Court Watch NOLA
Promise of Justice Initiative
Voice of the Experienced (VOTE)

CC: Hon. Susie Morgan, United States District Judge for the Eastern District of Louisiana