September 26, 2016

The Honorable Bob Goodlatte
Chairman, Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

The Honorable Zoe Lofgren
Ranking Member, Subcommittee on Immigration and Border Security
Committee on the Judiciary
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Goodlatte and Ranking Member Lofgren:

I write, joined by the undersigned, concerning the important issues raised by the Subcommittee’s hearing scheduled for September 27, 2016 at 10:00 a.m.—New Orleans: How the Crescent City Became a Sanctuary City. A press release announcing the hearing quoted remarks issued by Subcommittee Chairman Gowdy and House Judiciary Committee Chairman Goodlatte suggesting the “sanctuary” policy of the New Orleans Police Department “violate[s] federal law,” specifically 8 U.S.C. § 1373 (“Section 1373”), which provides, in relevant part:

(a) In general
    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, the Immigration and Naturalization Service information regarding the citizenship or immigration status, lawful or unlawful, of any individual.

(b) Additional authority of government entities
    Notwithstanding any other provision of Federal, State, or local law, no person or agency may prohibit, or in any way restrict, a Federal, State, or local government

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entity from doing any of the following with respect to information regarding the immigration status, lawful or unlawful, of any individual:

1. Sending such information to, or requesting or receiving such information from, the Immigration and Naturalization Service.
2. Maintaining such information.
3. Exchanging such information with any other Federal, State, or local government entity.

The Subcommittee’s concerns are misplaced. As I explain herein, the NOPD policy, like sanctuary policies generally, does not violate federal law.

A. There is no conflict between the current NOPD policy and federal law.

Neither the current NOPD policy, nor its February 2016 predecessor, conflicts with Section 1373 as properly interpreted. The NOPD policy states it is to be construed in accordance with the federal statute, and specifically allows NOPD members to “[s]end[] to ICE, or receiv[e] from ICE, information regarding the citizenship or immigration status of an individual.”

The current NOPD policy does state a clear preference for disentangling the NOPD from federal immigration enforcement. The policy aims to make “all individuals, regardless of their immigration status, … feel secure that contacting or being addressed by members of the NOPD

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5 The February 2016 version of the NOPD policy contained a broad prohibition on NOPD members’ disclosure of immigration-status information. While this prohibition made the question of the policy’s conflict with Section 1373 a closer one, the analysis presented in Section B of this letter explains why the Constitution requires a narrow reading of Section 1373 in order to honor local sovereignty and policymaking. Under such narrow interpretation, the February 2016 NOPD policy was lawful as a general confidentiality provision necessary to effectuate a local response to important civil rights concerns. See also City of New York v. United States, 179 F.3d 29, 36–37 (2d Cir. 1999) (dismissing facial challenge to constitutionality of Section 1373, but acknowledging the “circumscribed nature” of the analysis and leaving open the question whether a broad confidentiality policy prohibiting dissemination of immigration-status information generally would implicate the “not insubstantial” concerns with federal intrusion on state sovereignty posed by Section 1373).
6 NOPD Policy ¶ 5; see Chamber of Commerce of U.S. v. Whiting, 563 U.S. 582, 603, 131 S. Ct. 1968, 1982, 179 L. Ed. 2d 1031 (2011) (noting that state-law provision requiring its terms to be “interpreted consistently” with federal statutory and regulatory provisions helped “guard[] against any conflict with the federal law.”).
7 NOPD Policy ¶ 6.
will not lead to an immigration inquiry.” The policy contains provisions that prevent NOPD officers from inquiring into immigration status or taking action based on perceived immigration status. But these policy aims and limits on NOPD members’ activity are entirely consistent with Section 1373.

The Subcommittee is doubtless aware of the memorandum issued by Department of Justice Inspector General Michael E. Horowitz in May 2016 ("the Horowitz memorandum") addressing whether ten “judgmentally selected” jurisdictions had laws or policies inconsistent with 8 U.S.C. § 1373. The Horowitz memorandum found some of the jurisdictions studied had laws “inconsistent with” Section 1373. Other jurisdictions had policies relating to immigration detainers. While these jurisdictions admittedly did not “explicitly restrict[] the sharing of immigration status with ICE” the Inspector General nonetheless suggested that in practice such policies could be “inconsistent with and prohibited by” Section 1373.

The Horowitz memorandum presents an unjustifiably sweeping view of the reach of Section 1373 and ignores substantial legal issues that would be raised by federal attempts to exercise the level of control the Horowitz memorandum claims over state and local police department policies and officers.

A case addressing a policy of the Los Angeles Police Department (“LAPD”) governing interactions with noncitizens is instructive. The LAPD policy, known as “Special Order 40,” did not restrict LAPD officers from communicating with federal immigration authorities, but instead “impose[d] limits on [their] ability to investigate the immigration status of aliens with whom they come into contact.” The California appellate court rejected a facial challenge to Special Order 40, finding that it did not conflict with Section 1373: “[Special Order 40] does not address communication with ICE; it addresses only the initiation of police action and arrests for illegal entry. Section 1373(a) does not address the initiation of police action or arrests for illegal entry; it addresses only communications with ICE.” The court rejected a parallel preemption

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8 NOPD Policy ¶ 1.
9 E.g., NOPD Policy ¶ 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.”); id. ¶ 3 (“NOPD members shall not make inquiries into an individual's immigration status, except as authorized by this Chapter.”).
11 Horowitz memorandum at 3 (identifying the jurisdictions as the States of Connecticut and California; City of Chicago, Illinois; Clark County, Nevada; Cook County, Illinois; Miami-Dade County, Florida; Milwaukee County, Wisconsin; Orleans Parish, Louisiana; New York, New York; and Philadelphia, Pennsylvania).
13 Horowitz memorandum at 6-8 (addressing Cook County, Orleans Parish, Philadelphia, and New York City policies and ordinances).
15 Id. at 731.
argument, in part because the court held Special Order 40 to be “a regulation of police conduct and not a regulation of immigration.”

The NOPD policy here is indistinguishable from Special Order 40. Neither regulates communication with federal immigration officials. Instead, these policies regulate the conduct (not speech) of police officers. They conflict with neither the explicit terms of Section 1373 nor the structure of the system Congress created for immigration enforcement.

B. The federal government cannot commandeer or coerce state and local police agencies to cooperate in federal immigration enforcement.

As is demonstrated above, there is no conflict between the NOPD policy and federal law. Because there is no conflict, thorny legal questions concerning the relationship of the federal government to state and local governments are not implicated. Nonetheless, because the Horowitz memorandum stands as an official endorsement of a vision of vast federal power, and because it questions the legality of a prior version of the NOPD policy that may be discussed during the Subcommittee hearing, the federalism questions raised by the Horowitz memorandum’s interpretation of Section 1373 will be addressed briefly here.

1. Federalism ensures political accountability.

“Federalism, central to the constitutional design, adopts the principle that both the National and State Governments have elements of sovereignty the other is bound to respect.” While the States have “broad authority to enact legislation for the public good” — a “general police power” — the federal government is limited to those enumerated powers delegated to it by the people through the Constitution. The Tenth Amendment is the constitutional provision dedicated to preserving this “distinction between what is truly national and what is truly local.” And the core Tenth Amendment teaching of the Supreme Court is that the federal government must legislate, within its enumerated powers, directly upon individuals, rather than upon local government.

Thus, in New York v. United States, the Court declined to interpret federal legislation as “compel[ling] the States to regulate according to Congress' instructions,” instead interpreting (consistent with the canon of constitutional avoidance) the legislation as providing “incentives”

16 Id. at 732.
20 Id. at 567–68, 115 S. Ct. at 1634.
21 New York v. United States, 505 U.S. 144, 166, 112 S. Ct. 2408, 2423, 120 L. Ed. 2d 120 (1992) (“[T]he Framers explicitly chose a Constitution that confers upon Congress the power to regulate individuals, not States. … We have always understood that even where Congress has the authority under the Constitution to pass laws requiring or prohibiting certain acts, it lacks the power directly to compel the States to require or prohibit those acts.”).
to the States that would encourage regulation according to Congress’ wishes.\textsuperscript{22} The Court went on to hold that the third “incentive” offered to the States\textsuperscript{23} in that case was in fact a Hobson’s choice between two paths in which Congress directed the States. Finding this to be no choice at all,\textsuperscript{24} the Court struck down the legislation as violative of the Tenth Amendment.

Essential to the reasoning of \textit{New York} is the notion of political accountability. Where Congress encourages a State to pursue Congress’s policy choices, “the residents of the State retain the ultimate decision as to whether or not the State will comply,”\textsuperscript{25} by accepting or rejecting such encouragement. “Where Congress encourages state regulation rather than compelling it, state governments remain responsive to the local electorate's preferences; state officials remain accountable to the people.”\textsuperscript{26} But when Congress compels a State to pursue Congress’s policy choices, “the accountability of both state and federal officials is diminished.”\textsuperscript{27}

If Congress legislates on individuals directly, “it is the Federal Government that makes the decision in full view of the public, and it will be federal officials that suffer the consequences if the decision turns out to be detrimental or unpopular.”\textsuperscript{28} At the end of the day, then, while Congress may in some cases preempt State policymaking through legislation directly addressing individuals, it may not commandeer State policymaking; the Tenth Amendment preserves the ability of “elected state officials [to] regulate in accordance with the views of the local electorate.”\textsuperscript{29}

In \textit{Printz v. United States},\textsuperscript{30} the Court struck down a provision of the Brady Act that required local law enforcement to run background checks on gun purchasers. The underpinnings of \textit{Printz} are the \textit{New York} Court’s concerns with political accountability. As in \textit{New York}, the \textit{Printz} Court found the legislation repugnant because of its effort to control local government: “While the Brady Act is directed to ‘individuals,’ it is directed to them in their official capacities as state officers; it controls their actions, not as private citizens, but as the agents of the State. … To say

\begin{itemize}
  \item \textit{Id.} at 170, 112 S. Ct. at 2425 (1992).
  \item The incentive offered States the option of “either accepting ownership of [low-level radioactive] waste or regulating according to the instructions of Congress.” \textit{Id.} at 175, 112 S. Ct. at 2428.
  \item \textit{Id.} at 177, 112 S. Ct. at 2429 (“ A State may not decline to administer the federal program. No matter which path the State chooses, it must follow the direction of Congress.”).
  \item \textit{Id.} at 168, 112 S. Ct. at 2424.
  \item \textit{Id.}
  \item \textit{Id.}
  \item \textit{Id.} at 168-69, 112 S. Ct. at 2424.
  \item \textit{Id.} at 169, 112 S. Ct. at 2424; see also Lopez, 514 U.S. at 576–77, 115 S. Ct. at 1638–39 (Kennedy, J., concurring) (“The theory that two governments accord more liberty than one requires for its realization two distinct and discernable lines of political accountability: one between the citizens and the Federal Government; the second between the citizens and the States. … Were the Federal Government to take over the regulation of entire areas of traditional state concern, areas having nothing to do with the regulation of commercial activities, the boundaries between the spheres of federal and state authority would blur and political responsibility would become illusory.”).
\end{itemize}
that the Federal Government cannot control the State, but can control all of its officers, is to say
nothing of significance.” 31 Congress’s attempt to implement policy decisions through local
officers obscured accountability, putting local government “in the position of taking the blame
for [the federal policy’s] burdensomeness and for its defects.” 32 Taking control of local officers
away from local government violates “an essential attribute of the States’ retained
sovereignty”—“that they remain independent and autonomous within their proper sphere of
authority.” 33

In Printz, then, the Court found that “the whole object of the law” was “to direct the
functioning of the state executive, and hence to compromise the structural framework of dual
sovereignty.” 34 No balancing of state and federal interests was required, because such a law
offends “the very principle of separate state sovereignty. … [N]o comparative assessment of the
various interests can overcome that fundamental defect.” 35 As the Court put it more recently,
“Impermissible interference with state sovereignty is not within the enumerated powers of the
National Government.” 36

2. Section 1373 must be construed narrowly to prevent it from becoming an impermissible
try to direct local policymaking.

It should be apparent from the foregoing discussion that Section 1373 raises serious
constitutional concerns. First, Section 1373, if broadly construed, as it is in the Horowitz
memorandum, would by its terms aim to “direct the functioning” of State and local government
“entities” or “officials.” 37 That it would do so by means of a prohibition on state and local
tentities rather than a compulsion on them is of no constitutional moment. In contrast to 8 U.S.C.
§ 1357(g) (Section 287(g) of the Immigration and Nationality Act), which preserves the full
sovereignty of State and local governments by giving them the choice of whether to enter into
agreements permitting their officers and employees to participate in federal immigration
enforcement, 38 and specifies that such intergovernmental agreements must comply with State and
local law, 39 Section 1373 directly removes State and local choice over government “entities” and
“officials.” Under Section 1373, state officials are not permitted to “regulate in accordance with
the views of the local electorate.” 40 Local governments may choose to require communication

31 Id. at 930–31, 117 S. Ct. at 2382.
32 Id. at 930, 117 S. Ct. at 2382.
33 Id. at 928, 117 S. Ct. at 2381.
34 Id. at 932, 117 S. Ct. at 2383.
35 Id.
38 8 U.S.C. § 1357(g)(1) (requiring written agreement between the Attorney General and the
State or local government as a prerequisite to State or local officers exercising the powers of
federal immigration officers).
39 Id.
40 New York v. United States, 505 U.S. at 169, 112 S. Ct. at 2424.
with ICE, or they may choose to allow it—but they may not choose to forbid it.\textsuperscript{41} The political accountability ensured by the Tenth Amendment is absent.

The Supreme Court has said there is “no better example of the police power, which the Founders denied the National Government and reposed in the States, than the suppression of violent crime and vindication of its victims.”\textsuperscript{42} The NOPD policy, like other state and local sanctuary policies, is directed at improving policing, by ensuring that witnesses and victims of crime trust that communicating with police will not trigger deportation.\textsuperscript{43} Section 1373 directly interferes with and undermines the policing decisions of local governments that have enacted sanctuary policies. Section 1373’s requirement that local law enforcement officials cannot be prevented from voluntarily communicating immigration status information to ICE eviscerates any meaningful attempt to create community trust. As long as individual officers can communicate with ICE and thereby initiate deportation, the community trust is negated. In this way, the States are “put in the position of taking the blame”\textsuperscript{44} for the federally imposed policy.

\textsuperscript{41} In a Fifth Circuit decision striking down the Brady Act a year before \textit{Printz} was decided, the court wrote:

\begin{quote}
No choice is offered. The States may not say to Congress, “We are not interested in having state and local officials in our State, whose offices we create and duties we define, administer this federal regulatory scheme. If you want to conduct background searches of all persons purchasing handguns, look to your own federal background checkers.” Because the State has no walk-away opportunity, however costly or difficult, the States are victims of impermissible federal coercion.\textit{Koog v. United States}, 79 F.3d 452, 459–60 (5th Cir. 1996), cert. denied sub nom. United States v. Gonzalez, 521 U.S. 1118 (1997).
\end{quote}

\textsuperscript{42} \textit{United States v. Morrison}, 529 U.S. 598, 618, 120 S. Ct. 1740, 1754, 146 L. Ed. 2d 658 (2000); see also \textit{Kelley v. Johnson}, 425 U.S. 238, 247, 96 S. Ct. 1440, 1445, 47 L. Ed. 2d 708 (1976) (“The promotion of safety of persons and property is unquestionably at the core of the State’s police power”).

\textsuperscript{43} NOPD policy, ¶ 1 (“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 and/or deportation.”); \textit{See also, e.g., Bill Ong Hing, Immigration Sanctuary Policies: Constitutional and Representative of Good Policing and Good Public Policy}, 2 U.C. Irvine L. Rev. 247, 297-303 (2011); \textit{id.} at 303 (sanctuary policies “are intended to promote public safety. Their goal is to gain the immigrant community’s trust—trust that is needed for the community’s cooperation.”); \textit{President’s Task Force on 21st Century Policing, Final Report of the President’s Task Force on 21st Century Policing} 18 (2015) (“Immigrants often fear approaching police officers when they are victims of and witnesses to crimes and when local police are entangled with federal immigration enforcement. At all levels of government, it is important that laws, policies, and practices not hinder the ability of local law enforcement to build the strong relationships necessary to public safety and community well-being. It is the view of this task force that whenever possible, state and local law enforcement should not be involved in immigration enforcement.”).

\textsuperscript{44} \textit{Printz}, 521 U.S. at 930, 117 S. Ct. at 2382.
Just as in *Printz* the Supreme Court concluded that it would be local officials “who will be blamed” for the federal policy underlying the Brady Act, here any voluntary reporting of noncitizens to ICE by local police will be mistakenly interpreted as a local *policy*.\(^{45}\)

State and local sanctuary policies, like that adopted by the NOPD, also aim to reduce or eliminate racial profiling correlated to the availability of immigration enforcement action following local police action,\(^{46}\) and strive to provide police services equally to all residents, in order to comply with the Equal Protection Clause of the Constitution.\(^{47}\) This creates an

\(^{45}\) See Huyen Pham, *The Constitutional Right Not to Cooperate? Local Sovereignty and the Federal Immigration Power*, 74 U. CIN. L. REV. 1373, 1401 (2006) (“Local constituents are also likely to experience significant political accountability confusion with the double-negative prohibition of the 1996 laws. A constituent who hears that her co-worker has been reported to federal immigration authorities by a city police officer or teacher is more likely to conclude that it is the city’s policy to engage in such reporting, rather than to attribute the reporting to a federal prohibition and the voluntary action of the individual city employee.”).


\(^{47}\) The consent decree reached by the Department of Justice and the New Orleans Police Department in 2012 required, among other measures to achieve “bias-free policing,” that NOPD officers “not take law enforcement action on the basis of actual or perceived immigration status” and “not question victims of, or witnesses to, crime regarding their immigration status.” *United States v. City of New Orleans*, No. 2:12-cv-1924, Dkt. 2, *Consent Decree Regarding the New Orleans Police Department* (July 24, 2012) at ¶ 183. *See also*, e.g., Res. 2010-316, 2010 Bd. of Supervisors of the Cnty. of Santa Clara (Cal. 2010), available at https://www.sccgov.org/sites/cco/overview/impact/Documents/Resolution-Advancing-Public-Safety---June-22,-2010.pdf (finding that “laws like Arizona’s SB 1070 erode the relationship of trust between immigrant communities and local governments [and] subject individuals to racial profiling”).
additional issue affecting the federalism analysis. A federal court decision interpreting Alabama’s House Bill 56 (“HB56”) illuminates some of the complex issues that are created by the interplay of state policy, Section 1373, and the Equal Protection Clause. Section 28 of HB56 required Alabama public schools to ascertain the immigration status of every enrolled student. Noting that Section 1373 would subsequently permit this immigration-status information to be transmitted to federal authorities, the Eleventh Circuit held that Section 28 of HB56 presented an “increased likelihood of deportation or harassment upon enrollment in school” that would “significantly deter[] undocumented children from enrolling in and attending school,” in violation of their right to Equal Protection.

The Eleventh Circuit struck down Section 28 of HB56, thus preventing the public schools from acquiring immigration-status information in order to satisfy the Equal Protection Clause. The logic of the court’s opinion applies equally here, where noncitizens, knowing that they might be subject to “increased likelihood of deportation” if they interact with local police, are “significantly deterred” from such interaction, depriving them of the right to Equal Protection in the provision of police services. This suggests additionally authority for local policies against the acquisition of immigration-status information. Additionally, where a non-reporting policy is implemented by local police in order to satisfy the Equal Protection Clause, a reviewing court might determine that Section 1373’s seemingly broad sweep, rather than the local policy, must yield in light of the constitutional value at stake.

Finally, Section 1373’s control over the duties of government employees implicates state sovereignty because it arrogates to the federal government control over state resources. “Whatever the outer limits of state sovereignty may be, it surely encompasses the right to set the duties of office for state-created officials and to regulate the internal affairs of governmental bodies.” The power to determine the duties of its officials is so central to State sovereignty that even the First Amendment cannot justify federal intrusion into a State or local government’s control of the speech of a police officer in the course of his or her duties. A federal court thus

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48 Hispanic Interest Coal. of Alabama v. Governor of Alabama, 691 F.3d 1236, 1248 (11th Cir. 2012).
49 Id. at 1244.
50 Id. at 1247 (citing Plyler v. Doe, 457 U.S. 202, 102 S. Ct. 2382, 72 L.Ed.2d 786 (1982)).
51 See Elizabeth McCormick, Federal Anti-Sanctuary Law: A Failed Approach to Immigration Enforcement and a Poor Substitute for Real Reform, 20 LEWIS & CLARK L. REV. 165, 198-214 (2016) (arguing that despite the seemingly broad language of 8 U.S.C. § 1373, to the effect that it applies “[n]otwithstanding any other provision of Federal, State, or local law,” it is likely to be construed as consistent with other federal privacy laws”).
52 Koog, 79 F.3d at 460 (citing FERC, 456 U.S. 742, 761, 102 S. Ct. 2126, 2138, 72 L.Ed.2d 532 (1982) (“[T]he power of the States to make decisions and set policy is what gives the State its sovereign nature. It would follow that the ability of a state legislative ... body—which makes decisions and sets policy for the State as a whole—to consider and promulgate regulations of its choosing must be central to a State's role in the federal system.”) (citations omitted)).
53 Garcetti v. Ceballos, 547 U.S. 410, 421, 126 S. Ct. 1951, 1960, 164 L. Ed. 2d 689 (2006) (“We hold that when public employees make statements pursuant to their official duties, the
dismissed, notwithstanding Section 1373, a Houston police officer’s claim that her First Amendment rights were violated by the Houston Police Department’s policies limiting the circumstances in which HPD officers could transmit immigration-status information to ICE, finding such communications were made pursuant to her duties as an officer and therefore subject to her employer’s direction.\(^54\)

Neither \textit{Printz} nor \textit{New York} require federal intrusion to impose any financial cost on a local government in order to effectively commandeer state resources.\(^55\) But redirecting the efforts of state officials to the federal immigration enforcement effort implicates the \textit{Printz} Court’s concern that “[t]he power of the Federal Government would be augmented immeasurably if it were able to impress into its service—and at no cost to itself—the police officers of the 50 States.”\(^56\) In a “world of fixed and limited law enforcement resources,” preventing the local government from being able to direct its officers away from “federal” work and toward “state” work amounts to commandeering.\(^57\) “When someone who is paid a salary so that she will contribute to an agency’s effective operation begins to do or say things that detract from the agency’s effective operation, the government employer must have some power to restrain her.”\(^58\)

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In conclusion, sanctuary policies like the NOPD policy here operate squarely within the core of the police power retained by the States. For Congress to assume control over these policy decisions—and over state officials—violates an “essential attribute of the States’ retained sovereignty,” that they “remain independent and autonomous within their proper sphere of authority.”\(^59\) The NOPD, like many other jurisdictions around the nation, enacted its policy with the goals of creating and enhancing community trust, eliminating racial profiling, and fulfilling its “substantial interest in ensuring that all of its operations are efficient and effective.”\(^60\) Those policy decisions are the NOPD’s and not the federal government’s to make, and Section 1373 must be narrowly construed to take into account local sovereignty as well as the Equal Protection concerns at issue in the NOPD efforts at reform.


\(^55\) \textit{E.g. Printz}, 521 U.S. at 930, 117 S. Ct. at 2382 (“[E]ven when the States are not forced to absorb the costs of implementing a federal program, they are still put in the position of taking the blame for its burdensomeness and for its defects.”).

\(^56\) \textit{Id.} at 922, 117 S. Ct. at 2378.

\(^57\) \textit{See Koog}, 79 F.3d at 460.


\(^59\) \textit{Id.} at 928, 117 S. Ct. at 2381.

\(^60\) \textit{Duryea}, 564 U.S. at 386, 131 S. Ct. at 2494.
Current events demonstrate the importance of these local policy decisions, as local police departments in Charlotte, North Carolina; Baltimore, Maryland; Chicago, Illinois; and elsewhere around the nation grapple with the pressing issues of how best to police our communities—how best to deliver police services fairly to all, how best to engender trust among all members of our communities, and how best to eliminate racial biases that have eroded trust.

The Horowitz memorandum gives insufficient attention to the complex issues of federalism raised by Section 1373 and similar attempts to impose federal solutions on local problems.\(^6\) I write in the hope of encouraging the Subcommittee to give all appropriate consideration to these issues.

Thank you.

Respectfully yours,*

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\(^6\) The Horowitz memorandum mentions in passing the decision of the Third Circuit Court of Appeals in *Galarza v. Szalczyk*, 745 F.3d 634 (3d Cir. 2014), but fails to mention the Tenth Amendment analysis in the decision, holding that to *require* states and localities to detain prisoners pursuant to immigration detainers would run afoul of the anti-commandeering doctrine.
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