Judicial Watch®

Because no one is above the law!

<u>**VIA FACSIMILE NO: (626) 744-3781**</u>
<u>**AND CERTIFIED MAIL**</u>

October 12, 2010

Phillip L. Sanchez
Chief of Police
Pasadena Police Department
207 N Garfield Ave
Pasadena, CA 91101

Re: <u>Contacts With U.S. Immigration and Customs Enforcement</u>

Dear Chief Sanchez:

Judicial Watch, Inc. is an educational organization that seeks to promote transparency, integrity, and accountability in government and fidelity to the rule of law. We frequently work with like-minded citizens and taxpayers across the United States who share our respect for law enforcement and dedication to the rule of law.

This past summer, we read an article in the *Pasadena Star News* in which Pasadena Police Department ("PPD") Interim Police Chief Chris Vicino reportedly stated that it was the policy of the PPD to not inquire about the lawfulness of a person's immigration status "unless it is a matter of national security." Dan Abendschein, "Pasadena set to discuss Arizona immigration law," *Pasadena Star News*, May 16, 2010. Because any such policy would be in clear violation of federal law, we submitted a California Public Records Act ("CPRA") request to the PPD on June 4, 2010 for records about the PPD's policy regarding unlawfully present aliens in order to determine whether the news report had been correct. We had to file suit to obtain a response. *Judicial Watch, Inc. v. Pasadena Police Dep't*, Case No. GC045609 (Sup. Ct., Los Angeles Co., CA).

When the PPD ultimately responded to our request, we were very troubled to learn that Interim Chief Vicino's statement was largely confirmed by the PPD's response to our CPRA request. In response to our request, we were provided with a copy of Order No. E-5, originally issued on August 7, 1998 and last revised on March 6, 2005, on the subject of "Immigration Violations." We also were provided a copy of a document entitled Chief's Bulletin #2006-08, dated April 4. 2006 on the subject of the "Issue of Illegal Immigration."

According to the Chief's Bulletin, "With the exception of national security issues, the Pasadena Police Department does not check the immigration status of people with whom it comes in contact. It has not done so for over thirty years and that practice will not change." The Chief's Bulletin also states that "[i]llegal immigration is rapidly becoming one of those issues in which there is little, if any middle ground. As usually happens in these cases, law enforcement is caught in the middle." It further asserts:

> In order for the problem of illegal immigration to be brought under control, two things must occur. First, the federal government must adopt a comprehensive national strategy that acknowledges the economic realities that produce the desire for people to come here. Secondly, the borders need to be physically secured.

> Until both of these things happen, the only purpose that would be served by demanding that local law enforcement enforce immigration laws would be to alienate a significant portion of our community without anything positive to show for it. Many people in this city live and work with a great burden of fear and uncertainty. Our purpose is not to add to their anxiety.

As you may know, since 1996 federal law has expressly prohibited any type of restriction on officers' ability to obtain or provide information from federal immigration officials about a person's citizenship or immigration status. Specifically, Section 1373 of Title 8 of the United States Code states, in pertinent 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 [currently Immigration and Customs Enforcement (ICE)] 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 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.

8 U.S.C. § 1373(a) and (b).

Similarly, Section 1644 of Title 8 of the United States Code, states:

Notwithstanding any other provision of Federal, State, or local law, no State or local government entity may be prohibited, or in any way restricted, from sending to or receiving from the Immigration and Naturalization Service information regarding the immigration status, lawful or unlawful, of an alien in the United States.

8 U.S.C. § 1644.

There is no way to reconcile the PPD's policy, as articulated in the Chief's Bulletin, with federal law. Limiting officers' ability to inquire about a person's immigration status to only those situations that involve national security directly contravenes both 8 U.S.C. § 1373 and 8 U.S.C. § 1644. PPD may not ignore federal laws when those laws are not to its liking or not consistent with its own policy preferences. Nor may PPD set conditions that the federal government must meet, such as securing the border or adopting a different immigration strategy, before it will allow its officers to communicate or share information with federal immigration officials.

Moreover, the PPD will not better protect the residents of Pasadena by disregarding lawlessness or by putting unlawful constraints on its police officers. If PPD finds itself burdened by immigration law violators, the proper, lawful response is not to ignore suspected immigration law violators in all cases other than those that impair national security, but to report such persons to federal immigration officials.

Furthermore, the federal government has created special classes of visas to help state and local law enforcement agencies such as the PPD secure the cooperation of crime victims and witnesses who are unlawfully present in the United States. In 1994, the U.S. Congress created S visas for aliens, including unlawfully present aliens, who assist U.S. law enforcement in investigating and prosecuting crimes and terrorist activities. In 2000, the U.S. Congress created T visas, which allow certain victims of human trafficking to remain in the United States if they agree to assist law enforcement in testifying against the perpetrators. Also in 2000, the U.S. Congress created U visas, which are available to aliens, including unlawfully present aliens, who are the victims of certain serious crimes and who have cooperated with authorities in the prosecution of the perpetrator. In addition, PPD also has the option of seeking to have unlawfully
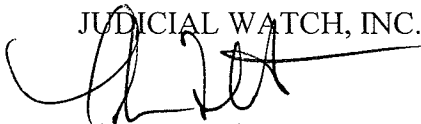
present aliens paroled into the United States on an individual basis in exchange for their cooperation with criminal investigations. Rather than adopting a "don't ask, don't tell" immigration policy that violates federal law, the PPD should use these lawful tools provided by the federal government to achieve its goal of encouraging all residents of Pasadena to cooperate with local law enforcement.

We hope that PPD will reevaluate its policy and conform it to the requirements of federal law. The current policy apparently has been in force for more than thirty years and fails to take into account both significant changes in federal law and significant increases in the level of illegal immigration. The citizens of Pasadena deserve an immigration policy that encourages crime victims and witnesses to come forward while allowing its officers to fully cooperate with federal immigration officials and respect the rule of law.

Thank you.

Sincerely,

JUDICIAL WATCH, INC.

Thomas J. Fitton
President