

June 19, 2017

**Via U.S. Mail & Fax (251-208-1705)**

City of Mobile Police Department  
Attn: Chief Lawrence Battiste  
2460 Government Street  
Mobile, AL 36606

**RE: The Use of Safety Check Points in “Identified Crime Areas”**

Dear Chief Battiste:

We write on behalf of the Southern Poverty Law Center regarding the Mobile Police Department’s (“MPD”) use of “safety check points.” On May 24, 2017, MPD announced that it planned to set up checkpoints in “identified crime areas.”<sup>1</sup> That night, MPD set up checkpoints in the RV Taylor and Village Green communities. The next night, MPD set up additional checkpoints in the Dickens Ferry and Old Shell Road area as well as the MLK and Broad Street area.<sup>2</sup> Per MPD, these checkpoints were initiated as part of Operation City H.E.A.T. to control recent increases in crime.<sup>3</sup> Each of the communities in which the checkpoints were set up is predominantly African American and home to many individuals living at or below the poverty line.

While we sympathize with the MPD’s desire to reduce crime, these checkpoints are legally problematic.<sup>4</sup> The Fourth Amendment to the U.S. Constitution prohibits the implementation of checkpoints for the primary purpose of reducing criminal activity. *See City of Indianapolis v. Edmond*, 531 U.S. 32 (2000). Because that is precisely the reason the MPD provided to the

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<sup>1</sup> *City H.E.A.T. Operation to Control Uptick in Violent Crime*. MPD News and Information. Published May 24, 2017. <https://www.mobilepd.org/news/city-heat-operation-to-control-uptick-in-violent-crime/>.

<sup>2</sup> *Safety Checkpoints Planned for Thursday*. MPD NEWS AND INFORMATION. Published May 24, 2017. <https://www.mobilepd.org/news/safety-checkpoints-planned-for-thursday/>.

<sup>3</sup> *City H.E.A.T. Operation to Control Uptick in Violent Crime*. MPD News and Information. Published May 24, 2017. <https://www.mobilepd.org/news/city-heat-operation-to-control-uptick-in-violent-crime/>.

<sup>4</sup> Johnson, Jason. *Mobile Police Return to “Safety Checkpoints.”* LAGNIAPPE WEEKLY. June 7, 2017. <https://lagniappemobile.com/mobile-police-return-safety-checkpoints/>.

media for implementing the checkpoints, we believe that the May 24<sup>th</sup> and 25<sup>th</sup> checkpoints likely violate the Fourth Amendment's prohibition against illegal search and seizure. *Id.* Accordingly, we ask for your prompt attention to this practice and the issues that are raised in this letter.

### **MPD Implemented Checkpoints to Control Crime Rates**

The checkpoints MPD set up on May 24-25, 2017 were implemented as part of the Operation City H.E.A.T. initiative. MPD announced that the purpose of Operation City H.E.A.T. was to “control the uptick in violent crime, including illegal drug activity.”<sup>5</sup> The placement of these checkpoints was not arbitrary and the checkpoints were not equally distributed throughout the city. Rather, as you confirmed in a newspaper article published on June 7, 2017, MPD evaluated crime reports and trends prior to setting up checkpoints in areas that were identified as having high crime rates.<sup>6</sup> As you further stated in that article, this tactic was selected in response to an increased number of shootings and increased numbers of assaults rather than for highway safety.<sup>7</sup>

The checkpoints on May 24<sup>th</sup> resulted in numerous tickets and at least 10 arrests, including arrests for felony charges.<sup>8</sup> Ninety percent of the people arrested at these checkpoints were African American.<sup>9</sup> The number of arrests made on May 25<sup>th</sup> has not been reported.

### **The Fourth Amendment Prohibits the Use of Checkpoints to Control Crime**

The Fourth Amendment to the U.S. Constitution prohibits the government, including municipal law enforcement entities, from conducting searches and seizures absent a warrant or probable cause based on an individualized suspicion that the person has committed a crime. Amend. IV. U.S. Const. “A vehicle stop at a highway checkpoint effectuates a seizure within the meaning of the Fourth Amendment.” *Michigan Dept. of State Police v. Sitz*, 496 U.S. 444, 450 (1990). Consequently, an officer must have individualized suspicion when initiating a checkpoint.

Checkpoints can only be implemented without individualized suspicion in very limited circumstances. These circumstances include: 1) sobriety checkpoints aimed at immediately removing drunken drivers from the highway; 2) checkpoints where the primary purpose is to verify driver's licenses and registration for highway safety; 3) permanent immigration checkpoints near the country's borders; and 4) exigent circumstances. *Edmond*, 531 U.S. at 37-

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<sup>5</sup> *City H.E.A.T. Operation to Control Uptick in Violent Crime*. MPD News and Information. Published May 24, 2017. <https://www.mobilepd.org/news/city-heat-operation-to-control-uptick-in-violent-crime/>.

<sup>6</sup> Johnson, Jason. *Mobile Police Return to “Safety Checkpoints.”* LAGNIAPPE WEEKLY. June 7, 2017.

<https://lagniappemobile.com/mobile-police-return-safety-checkpoints/>.

<sup>7</sup> *Id.*

<sup>8</sup> *Safety Checkpoint Results for Wednesday, May 24th*. MPD NEWS AND INFORMATION. Published May 25, 2017. <https://www.mobilepd.org/news/safety-checkpoint-results-for-wednesday-may-24th/>.

<sup>9</sup> Johnson, Jason. *Mobile Police Return to “Safety Checkpoints.”* LAGNIAPPE WEEKLY. June 7, 2017.

<https://lagniappemobile.com/mobile-police-return-safety-checkpoints/>.

40. A checkpoint whose primary purpose falls outside of these exceptions violates the Fourth Amendment and is impermissible.

In *Edmond*, the Supreme Court specifically found that a checkpoint whose primary purpose is indistinguishable from a city's general interest in crime control violates the Fourth Amendment. *Id.* Similar to the City of Mobile, the checkpoint locations in *Edmond* were selected weeks in advance based on such considerations as area crime statistics and traffic flow. The Court found that the checkpoints were being operated "in an effort to interdict unlawful drugs" and that, despite other safety concerns asserted by the city, the primary purpose was "in the end to advance the general interest in crime control." *Id.* at 41, 44.

Although courts have found that in some circumstances the secondary interest of reducing crime does not invalidate a checkpoint whose primary purpose is valid, courts have been careful to distinguish between cases where the primary purpose of the checkpoint is legitimate and those where highway safety is simply a pretext for confronting general wrongdoing. *See Wrigley v. State*, 248 Ga.App. 387, 389-90 (Ga. App. 2001). For example, in *Mia Luna, Inc., v. Hill* the district court found that a roadblock was invalid where the sheriff asserted that the roadblocks were legitimate law enforcement initiatives but also "seemed to admit that the roadblocks were designed to detect evidence of general criminal activity." 2008 WL 4002964, \*8 (N.D. Ga. 2008).

### **The Equal Protection Clause of the Fourteenth Amendment Prohibits Selective Prosecution Based on Race**

The Fourteenth Amendment prohibits states from denying individuals the right to equal protection of the law. Amend. XIV. U.S. Const. Under the equal protection component of the Fourteenth Amendment's Due Process Clause, the decision whether to prosecute an individual may not be based on an arbitrary classification such as race. *United States v. Armstrong*, 517 U.S. 456, 457 (1996). In a selective prosecution case, individuals may demonstrate that they have been denied equal protection where the prosecutorial policy "had a discriminatory effect and that it was motivated by a discriminatory purpose." *Id.* at 465. "To establish discriminatory effect, the claimant must show that similarly situated individuals of a different race were not prosecuted" or pursued by the police. *Id.* Where an individual can prove that he or she was disproportionately impacted on the basis of race, that individual may have a viable equal protection claim against a state or municipality.

In light of the U.S. Constitution's clear prohibition against checkpoints whose primary purpose is to control general crime and MPD's admission that its recent checkpoints were implemented for exactly that purpose, and given the disproportionate impact that these targeted checkpoints have on African American communities, we urge you to end the operation of all existing and future checkpoints that do not comply with the U.S. Constitution. To the extent that you decide to

implement checkpoints in the future, we caution you against using them as a pretext for general crime control as well as using them solely or disproportionately in communities of color.

Our hope is that by reaching out to you, we are able to work with you to ensure that you can fulfill your law enforcement duties while simultaneously respecting the constitutional rights of all individuals. However, if you choose to continue with the aforementioned tactics, we will consider further action against your department. Please contact our office if you have questions or desire our assistance.

Sincerely,



Latasha McCrary  
Staff Attorney



Ebony Howard  
Associate Legal Director