

TURRENTINE
LAW FIRM, PLLC

September 26, 2012

Thomas E. Perez
Assistant Attorney General
U.S. Department of Justice
Civil Rights Division
950 Pennsylvania Ave., NW
Washington, DC 20530-0009

Re: DOJ Investigation of the Alamance County Sheriff's Office

Dear Mr. Perez:

I have received your letter dated September 18, 2012 relating to the Civil Rights Division's ("DOJ") investigation of the Alamance County Sheriff's Office. On behalf of my client, Terry Johnson, Sheriff of Alamance County, I am replying to the allegations in the letter.

It should be pointed out that the letter is full of factual inaccuracies and devoid of specifics. It is instead an indictment of the Sheriff based on newspaper articles, rumors, and gossip. As will be indicated below, due to these factual inaccuracies, the conclusion that the Sheriff or his deputies violated any laws of the United States is fatally flawed.

Initially, you accuse the Sheriff of not cooperating with your investigation of discrimination and unconstitutional searches and seizures. You state that the Sheriff's Office did not provide important information and failed to provide requested records and documentary evidence. You further state that the Sheriff refused to permit attorneys for DOJ to interview current and former Sheriff's office personnel outside the presence of counsel. This is simply a misstatement of what occurred and a misstatement of the position of the Sheriff.

The Sheriff's Office provided tens of thousands of documents requested by your attorneys, including entire hard drives from computers. Even after submitting these thousands and thousands of records, it would be months before your attorneys would even try to access the

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information. Apparently, from the accusations in your letter, the information in the documents was never properly analyzed.

Likewise, your statements regarding the Sheriff's position as to interviewing personnel is faulty. The Sheriff's position, as stated in his Answer and Briefs in the suit filed by your Department, was and continues to be that the only objection the Sheriff had was with your attorneys interrogating current deputies without benefit of counsel. After suit was filed by your Department, the Sheriff proposed that DOJ attorneys be allowed to interrogate deputies with private counsel for the deputies being present, but outside the presence of the County Attorney. Your attorneys refused; insisting that they had the right to question the deputies without their counsel being present. Your attorneys have now dismissed the Federal lawsuit with prejudice. This action was very puzzling as the DOJ attorneys had previously indicated that they had to interview the deputies in order to do a proper investigation, and felt so strongly that they filed a Federal suit. However, it now appears that the investigation by your attorneys has been concluded without the necessity of interviewing deputies.

Your letter does state that current and former Sheriff's Office employees were interviewed as part of your investigation. As it has now been judicially determined by your taking a dismissal with prejudice that interviewing current deputies without benefit of counsel is a violation of Rule 4.2 of the North Carolina Rules of Professional Conduct, and the rules of the United States District Court for the Middle District of North Carolina, I would request that you furnish any information that you possess that one or more of your attorneys interviewed current deputies without benefit of counsel so that an ethics complaint can be filed against them.

While my client agrees that constitutional policing and effective law enforcement go hand-in-hand, as will be shown below, the Alamance County Sheriff's Office does not discriminate against any persons, including Spanish speaking individuals. As such, my client does not believe that any "negotiated settlement" is necessary or advisable.

As indicated above, I will now address each of your so-called "factual findings". In order to correlate the responses to the allegations, I will use your headings for the various allegations.

A. Discriminatory Practices

It should first be noted that your allegations go back to at least 2007. This is beyond any statute of limitations for the Federal statutes which you state are the basis of your investigation. That being said, there has been no targeting of people of Spanish speaking individuals for traffic enforcement, vehicle checkpoints, or detaining persons in the Alamance County Jail.

First, traffic stops. You indicate that you have done a statistical analysis that indicates on certain roads that "Latino drivers" are four to ten times more likely to be stopped than "non-Latino drivers". Since your attorneys have refused to provide a copy of this alleged analysis, if it indeed exists, it is impossible to test its conclusions. However, it appears that the alleged

analysis applies to only certain roads in Alamance County. Apparently, the roads were not chosen at random, but chosen based on Spanish speaking persons living on or near the roads. This is the only conclusion which makes any sense when the traffic stop numbers are actually used. During the year 2011, the last full year for which we have statistics, Alamance County Sheriff's deputies made 3,696 traffic stops. Of these, 466 (12.6%) of the stops were of persons of Spanish speaking persons. Of these 466 stops, 237 people were given citations, 226 were given verbal warnings, and 64 were arrested. Of all the traffic stops by the Alamance County Sheriff's Office in 2011, only 1.7% resulted in arrests of persons of Spanish speaking persons. As stated in your letter, 11% of the population of Alamance County is composed of Spanish speaking persons according to the 2010 census. It is widely accepted that the 2010 census undercounted Spanish speaking persons who were in the country illegally as they were afraid to answer the census questionnaire. As such, it would appear that based on the actual number of traffic stops, the number of stops of Spanish speaking persons were proportional to the actual population of Spanish speaking persons in the County.

It should be noted that your paragraph ends with an allegation that an unnamed deputy stated that he stopped a "Latino" driver because "most of them drive without licenses." This typifies your report. An unnamed deputy, at an unnamed time, allegedly made a racial statement. If there is any truth to this allegation, why isn't the deputy named and the time and place of the wrongdoing stated? Without this information, it appears that you are simply taking a cheap shot at the Alamance County Sheriff's Office without any factual basis for your statement.

Second, vehicle checkpoints. You state in your letter that Sheriff Johnson targets "Latino neighborhoods to set up vehicle checkpoints". You make this bald allegation without any factual backup, and it is completely and utterly false. Virtually all the checkpoints set up in Alamance County involving sheriff's deputies are done in conjunction with the North Carolina Highway Patrol and other law enforcement agencies. The checkpoints have been set up in virtually all areas of Alamance County. These checkpoints have also been set up in large part as a part of the Governor's Highway Safety Program, the Click it or Ticket campaign, and the Booze it and Lose it program.

Third, checkpoint practices. Here again you make allegations of misconduct which are at odds with the facts. If the Alamance County Sheriff's Office were indeed making arrests instead of giving tickets to Spanish speaking persons, why would the deputies give out 237 citations and 226 verbal warnings to Spanish speaking people with only 64 arrests as was done in 2011? If indeed there were any truth to your allegations, the numbers should be reversed with an overwhelming number of Spanish speaking people being arrested and very few being cited. Your only evidence presented is an alleged unattributed statement made by Sheriff Johnson to his subordinates to arrest "a Mexican" and not give him a citation. This is not the policy of Sheriff Johnson and is completely false. You then cite an alleged incident, in which you fail to state the parties involved or when it allegedly occurred, where a "Latino" man was arrested and a white woman was giving a written citation. Without any specifics, I cannot verify if this happened or why it may have happened. However, it should be noted that deputies will make a full custody

arrest if the person has committed an arrestable offense and has no valid identification. This is done in order to verify the identity of the person, and to make a determination as to whether or not there are outstanding warrants on the individual. This practice does not depend on race or ethnicity, but applies to all persons who commit arrestable offenses.

Fourth, jail booking procedures. All booking procedures as they relate to immigration status has been reviewed by Immigration and Customs Enforcement (“ICE”) as part of its contract with Alamance County, and ICE has provided detailed guidance as to the procedures to be followed in processing detainees. ICE sends a four person team to inspect the jail programs over a two day period. These inspections happen several times a year. As shown by the article in the Burlington Times News entitled “Feds: Sheriff’s 287(g) operation is ‘model program’” dated January 5, 2012, not only has ICE found that the Alamance County Jail does not violate the rights of detainees, the inspectors stated that the program in the Alamance County Jail was a “model program” in the country. The statements made in your letter indicate that your attorneys do not have an understanding of the 287(g) program. It would have been preferable for your attorneys to contact ICE before making unfounded accusations regarding the processing of detainees. Not only does the Alamance County Jail not violate the rights of illegal aliens, it was a model program for the country until you ordered the program shut down.

Fifth, drug trade. You seem to be stating in this allegation that the Sheriff illegally profiles “Latino mobile home parks and neighborhoods”. Interestingly enough, you do not make any allegations that the raids were not successful in getting drugs off the street or in making drug related arrests. You apparently are also unaware that many if not most of these raids were done based on information from the United States Drug Enforcement Administration, or were done in concert with the United States Drug Enforcement Administration (“DEA”). We do not believe that DEA has been actively singling out “Latino mobile home parks and neighborhoods” for special action, but should you believe this to be the case, then your investigation should also be reviewing Federal agencies. However, it should be stated that the Sheriff’s Office will investigate any and all allegations of drug dealing in the County regardless of the ethnicity of the drug dealers.

Sixth, ability to serve and protect. Initially, it should be pointed out that this paragraph does not allege any violation of law, but it instead represents your own political viewpoint. The extent of community outreach that the Sheriff determines should be done by his department is solely in his judgment. Further, it appears that by saying that “Latinos are afraid to call the police”, you are really saying that illegal aliens are afraid to call police for fear of being deported. I suspect that is largely true throughout the United States. If a person is breaking the law, he or she is less likely to call the police to come investigate another crime. However, it is important to recognize that your statement says nothing about the response when the Sheriff’s Office is actually dispatched to a crime. The Sheriff’s Office responds to all calls regardless of whether or not the caller is in this country legally or illegally.

B. Discriminatory Bias

These three paragraphs are little more than an *ad hominem* attack on Sheriff Johnson, and is little more than a libelous political attack on the Sheriff. This entire investigation by DOJ began as an attempt to defeat the Sheriff at the polls and to eliminate the 287(g) program at the Alamance County Jail. In November 2009, DOJ opened a preliminary inquiry into “allegations that the Alamance County Sheriff’s Office was engaged in a pattern or practice of discriminatory law enforcement activities”. As part of its inquiry, DOJ met and talked with members of Fairness Alamance.

Fairness Alamance is a group formed to challenge Sheriff Johnson over the 287(g) program in the Alamance County Jail. DOJ’s involvement with members of Fairness Alamance dates back to at least September 2008. During February 2009, members of Fairness Alamance worked with the ACLU of North Carolina in presenting a panel discussion at Elon University. The Sheriff was invited to be on the panel. When the statistics were not as favorable to the position of Fairness Alamance and the ACLU, Katherine Lewis Parker, then Legal Director, ACLU of North Carolina wrote to members of Fairness Alamance and suggested that “Instead of worrying right now about enforcement, I think y’all should focus on embarrassment.” She further suggested that the Sheriff be invited to be on the panel, the “stats” not be disclosed until the presentation at which time the numbers would be presented “with no notice”.

Following the meetings with Fairness Alamance, on June 2, 2010, DOJ notified the Sheriff that it was initiating an investigation of the Alamance County Sheriff’s Office, “concerning allegations of discriminatory policing and unconstitutional searches and seizures by members of the Alamance County Sheriff’s Office”. Following the announcement by DOJ of its investigation, Fairness Alamance actively assisted DOJ by speaking to four English as a Second Language classes at Alamance Community College, sending out an e-mail to its members seeking persons who “experienced racial profiling in Alamance County”, and publicly seeking assistance for the Plaintiff’s investigation. At the same time, Fairness Alamance was endorsing Sheriff Johnson’s opponent in an upcoming election for sheriff.

This same attempt to embarrass the Sheriff continues in the allegations contained in this section. You have lifted quotes from a newspaper story regarding the human trafficking of children by Mexican gangs. The Sheriff was absolutely correct when he stated that the moral values of the citizens in North Carolina are different than that of gangs involved in human trafficking. This does not represent the views of the Sheriff as to Mexicans or any other Spanish-speaking persons other than gang members.

You then accuse the Sheriff of using racial epithets such as “taco eaters”. The Sheriff categorically denies that he uses such a term. Further, neither I nor my legal assistant, who is of Mexican descent, is familiar with the term being used as a racial epithet. This appears to be a fabrication by someone who could not come up with a better allegation on short notice.

The last paragraph in this section is addressed above, and simply repeats the misrepresentations and distortions previously stated above.

C. Policing Standards and Procedures

The statements contained in this section are simply false. The Alamance County Sheriff's Office keeps detailed records of all checkpoints. You then accuse the Sheriff of underreporting vehicle stops based on a newspaper article from three years ago. However, the situation from three years ago was that a computer program purchased by the County was defective. The Sheriff brought this to the attention of the Board of County Commissioners who replaced the faulty program. With the new software, the Sheriff's Office has been able to post vehicle stop information on its website to ensure transparency.

The next accusation is that when "Latinos" are booked into the jail they are listed as "black" or "white". This is correct as far as race is concerned. "Latino" does not represent race, but rather it reflects one's ethnicity. This is reflected on forms produced by the State of North Carolina such as DCI-608F, "Arrest Report".

The last accusation in this section deals with the Sheriff's Special Operations Unit. You indicate that the Unit "performs traffic enforcement" and is responsible for "most of the County's traffic stops". This is again another untrue statement. The Special Operations Unit does not normally do traffic enforcement or make traffic stops. The Unit is composed of three sub-units; Vice, Gangs, and Task Force Officers. This Unit is the primary unit in the Sheriff's Office which works jointly with Federal agencies doing law enforcement. The members of the Unit are selected based on qualifications and ability. The members of the Unit do fill out all required documents. This is especially important since Federal charges are often being brought against the individuals arrested instead of State charges.

Legal Discussion. Since your factual predicate for your legal analysis can best be described as faulty, if not down right false, your legal discussion is meaningless. I therefore will not address it further.

Remedial Measures. No remedial measures are needed. The Alamance County Sheriff's Office consists of dedicated, well-trained individuals who enforce the law fairly and evenly without regard to any person's race or ethnicity.

The Road Ahead. Before dealing with the "Road Ahead", I believe it would be helpful to review how this report came about. The investigation by your Department was begun at the urging of a liberal group, Fairness Alamance, which was dedicated to eradicating Alamance County's Section 287(g) program. At the same time Fairness Alamance was working with your Department, it was endorsing the Sheriff's opponent in a then upcoming election. When the group, working with the ACLU, was unable to show discriminatory policing, it focused then on attempting to embarrass the Sheriff.

Working with Fairness Alamance, your Department has now produced a report that is short on facts and long on distortion and misrepresentations. Unlike all other Federal investigations with which I have been involved, there was no meeting prior to the release of the report. Normally, I expect the Federal Agency to have a set of draft findings which are reviewed with the entity under investigation. Had this been done, many of the misstatements in the report could have been corrected. Instead, this report appears to have been hurriedly prepared to be released, without review, prior to the upcoming election.

If you seriously do want to work collaboratively with law enforcement, and your statements are not purely for political purposes, then I ask you to review the underlying factual basis of your report. If you then have any concerns about the operations of the Alamance County Sheriff's Office, we will be glad to address those concerns with you. Sheriff Johnson is dedicated to serving all the people of Alamance County fairly and without discrimination, including its Spanish speaking citizens.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. C. Kitchen', written in a cursive style.

S. C. Kitchen

xc: Sheriff Johnson