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September 24, 2013

Via Certified Mail (RRR)

Sheriff Jimmy Ashe
Jackson County Sheriff's Office
399 Grindstaff Cove Road
Sylva, NC 28779

Via e-mail and regular mail

Mr. Lee Davis, Jr., Esq.
Davis & Hamrick, LLP
P.O. Drawer 20039
Winston-Salem, NC 27120-0039

Re: Checkpoint Policy Changes

Dear Sheriff Ashe and Mr. Davis:

Thank you for taking the time to meet with me on September 16, 2013. As you know, we have been investigating the manner in which Jackson County Sheriff's Office ("JCSO") deputies execute checkpoints throughout the county. In a letter dated July 1, 2013, we informed your office that the Latino community in the county felt targeted by the checkpoints. We are writing to you to memorialize some of the discussion that took place during our September 16th meeting and to formally propose several steps the JCSO can take to address the community's concerns.

1. We ask that JCSO no longer rely on CrimeStoppers calls to set up checkpoints.

As you mentioned during our conversation, the JCSO utilizes CrimeStoppers calls to determine checkpoint locations. We understand that CrimeStoppers gathers anonymous complaints from community members who call the hotline to report all types of violations. Basing checkpoint placement on CrimeStoppers tips is problematic as it violates the Fourth Amendment to the United States Constitution and fails to satisfy North Carolina statutory requirements.

First, law enforcement cannot utilize checkpoints for general crime control consistent with the Fourth Amendment. See *City of Indianapolis v. Edmond*, 531 U.S. 32, 44 (2000). The Court of Appeals for the District of Columbia also applied this rule to determine that a checkpoint program in Washington, DC violated the Fourth Amendment because the checkpoints' purpose was to interdict crime. *Mills v. District of Columbia*, 571 F.3d 1304, 1311 (D.C. Cir. 2009). These cases stress that checkpoints conducted for the purpose of general crime control deviate from the Fourth Amendment's requirement that an officer must have individualized suspicion before stopping a vehicle. JCSO's current practice of placing checkpoints in areas it has received CrimeStoppers complaints is thus a violation of drivers' constitutional rights.

Additionally, North Carolina law requires checkpoints to be located randomly or statistically indicated. N.C.G.S. § 20-16.3A(d). No matter how well intended, the general citizenry has not received law enforcement training, and thus are not qualified to determine violations of the traffic laws. Hence, citizen reports are insufficient to amass statistics necessary to meet the statutory requirement.

Accordingly, we ask that the JCSO stop using CrimeStoppers calls to determine checkpoint locations, and to implement a system that will ensure checkpoints are located in accordance with the statute.

2. We request that the JCSO publicize that it will no longer cooperate with Immigration and Customs Enforcement (“ICE”) during checkpoint execution.

The JCSO conducted at least three checkpoints in close cooperation with ICE. In addition to the May 15, 2012 checkpoint, public records revealed that JCSO deputies coordinated a checkpoint with ICE’s Agent Perry on June 18, 2009, and with Deportation Officer Christine A. Dablewski in Hendersonville on or about the weekend of July 28, 2011.

These checkpoints contribute to the concern that JCSO deputies target the Latino community. Trust building and transparency are particularly important here as Mr. Davis’s August 21, 2013 letter disputed the fact that three immigration checkpoints had taken place in Jackson County. Announcing publicly that the JCSO will no longer collaborate with ICE during checkpoints will help regain the trust of the Latino community in Jackson County.

3. We ask that JCSO adopt a checkpoint form to be completed **prior** to all checkpoints.

In order to confirm that checkpoints are being duly authorized, we ask that the JCSO adopt a form to be completed **prior** to the execution of a checkpoint. The North Carolina State Highway Patrol (“SHP”) and several other jurisdictions across the state utilize this type of document when executing a checkpoint. During our meeting, I provided copies of the form utilized by SHP and the Winston-Salem Police Department. This form provides information regarding the checkpoint location, the purpose of the checkpoint, the date and time of the checkpoint, and, most importantly, it includes space for the authorizing superior officer to sign and approve the checkpoint, authorization already required by the Basic Law Enforcement Training Manual.¹ The form must accompany any citations issued during the checkpoint in order to eliminate any possibility of officers seeking authorization after the completion of the checkpoint. The adoption of this form would allow the public to make sure the checkpoints are being conducted uniformly and would empower the JCSO to show that its checkpoints are not racially motivated or biased.

4. We ask that JCSO improve reporting of demographic information of drivers cited at checkpoints.

During our investigation, we discovered that the JCSO does not accurately report data collected by officers in accordance with N.C.G.S. § 114-10.01 for citations issued at checkpoints. As you know, the JCSO must report the race or ethnicity of drivers detained and cited in accordance with the aforementioned law to the Division of Criminal Statistics of the North Carolina Department

¹ Techniques of Traffic Law Enforcement pg. 17

of Justice (“NCDOJ”). The report for the JCSO obtained from the NCDOJ’s website severely undercounts the number of citations issued by JCSO deputies during checkpoints.

As I mentioned during our meeting, this may be attributed to the fact that officers may be checking the wrong box in form SBI-122. Form SBI-122 contains a section entitled “Initial Purpose of Traffic Stop.” If an officer, for example, issues a ticket after he or she observes a driver not wearing a seatbelt, the officer must fill out the SBI-122 by marking the box “Seatbelt Violation” as the initial purpose of the stop. However, if an officer issues a citation to a driver for not wearing a seatbelt and such violation was discovered after a checkpoint stop, officers must use the box entitled “Checkpoint” as the initial purpose of the stop even though the citation was for a seatbelt violation. Thus, we ask that you instruct all JCSO officers to report citations issued at checkpoints by checking the box labeled “checkpoint” for the initial purpose of the stop in the SBI-122 form. This will help the public ascertain that no group is being targeted for citations during checkpoints.

5. We request that JCSO increase the level of authorization for all checkpoints.

Based on our conversation and the JCSO Policy No. 03-12, it is my understanding that all checkpoints conducted by JCSO need to be supervised by a Sergeant or officer of higher rank. Additionally, checkpoints conducted on U.S. 74 or U.S. 441 are to be supervised by a Lieutenant. In order to ensure a high level of oversight and minimize the level of discretion of individual officers, we request that only lieutenants **authorize** checkpoints. Having a lieutenant authorize the checkpoints prior to execution would ensure that officers in the field have minimal discretion over the checkpoints’ locations and that such locations are randomly selected or that there is statistical evidence to support the placement of a checkpoint in accordance to the law.

We understand your concerns expressed during our meeting that JCSO only has four lieutenants. However, we are not requesting that your limited number of lieutenants supervise the checkpoints, but merely that they provide the authorization for officers to conduct a checkpoint in a certain location. This is just a limited expansion of what officers are required to do before setting up a checkpoint according to the training manual.²

6. We ask that JCSO record checkpoints, and the officers’ patterns of stopping vehicles, with in-car cameras.

As discussed, this measure was adopted by the Winston-Salem Police Department as part of our investigation into how such department executed checkpoints in Winston-Salem. This recording helps address community members’ concern that officers wave white drivers through the checkpoint and only stop Latino drivers.

7. We ask the JCSO implement additional training regarding checkpoint policies, as well as racial bias.

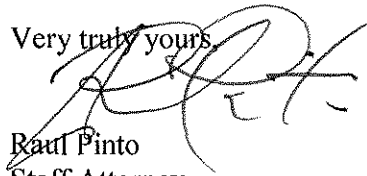
Finally, we ask that the JCSO implement additional training regarding these proposed policies and racial bias. We are hopeful that with this type of training, officers and supervisors will be able to better discern when a possible action may lead to racially biased tactics and thus avoid them in practice.

² *Supra* n. 1.

In summary, our proposed measures to eradicate racial biased police practices at checkpoints are:

1. **Adopt a policy whereby JCSO deputies no longer rely on CrimeStoppers to locate checkpoints.**
2. **Announce publicly that JCSO will no longer execute checkpoints in collaboration with ICE.**
3. **Implement a form to be completed prior to the execution of a checkpoint.**
4. **Improve accuracy of reporting of checkpoint citations to the NCDOJ.**
5. **Increase the level of authorization required for checkpoint execution.**
6. **Use in-car cameras to record checkpoints.**
7. **Implement additional training to JCSO officers on these policies and racial biased policing.**

Please provide us with a timeline by **Thursday, October 10, 2013**, detailing when these policies will be implemented. We look forward to working with you to address this issue and improve the relationship between the JCSO and the Latino community of your county. If you have any questions, please do not hesitate to contact me.

Very truly yours,

Raul Pinto
Staff Attorney