

Exhibit 44

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May 29, 2009

HAND DELIVERY

The Honorable Eric H. Holder Jr.
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

The Honorable Janet Napolitano
Secretary of Homeland Security
U.S. Department of Homeland Security
Washington, DC 20528

Re: Civil Rights Division/Department of Homeland Security Investigation of
the Maricopa County Sheriff's Office – Impermissible Contact with
Represented Parties and Concerns of Improper Political Influence

Dear Attorney General Holder and Secretary Napolitano:

This firm, along with Brian D. Black and L. Eric Dowell of the firm of Olgetree Deakins, has recently been retained to represent the Maricopa County Sheriff's Office ("MCSO") in (1) the investigation commenced on March 10, 2009 by the United States Department of Justice ("DOJ" or "Department") Civil Rights Division's Special Litigation Section pursuant to the pattern or practice provisions of the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 ("Section 14141") and the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3789d ("Safe Streets Act"); (2) the investigation commenced by the Coordination and Review Section under the prohibitions against national origin discrimination in Title VI of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000d to 2000d-7 ("Title VI") relating to services for limited English proficient (LEP) individuals; and (3) in the audit review being conducted by the Department of Homeland Security ("DHS") regarding the U.S. Immigration and Customs Enforcement's ("ICE") 287(g) program. While the factual basis for these investigations is unclear, it appears that the investigations focus on the MCSO's enforcement of immigration laws pursuant to its agreement with DHS under the ICE 287(g) program.

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I write to make you aware of what appears to be a serious violation of ethical standards of conduct required of DOJ attorneys and to seek assurances that political rivalries and score-settling play no role in these investigations.

CONTACT WITH REPRESENTED PARTIES AND UNDISCLOSED INFORMATION SHARING

Although no lawsuit is pending, relevant ethical standards apply during a DOJ investigation. *See* 28 C.F.R. Part 77. Under the ethical standards applicable to lawyers (which may include the standards of the District of Columbia, Arizona, or other states depending on the bar admission of the attorneys involved in this matter), contact by DOJ attorneys with represented parties, except through their counsel, is prohibited.

The Maricopa County Attorney's Office ("MCAO" or "Counsel") was made aware of the investigation being conducted by the Civil Rights Division's Special Litigation Section by letter dated March 10, 2009, to which Counsel responded on March 13, 2009, and, since that time, Counsel has engaged in negotiations regarding discovery and possible witness interviews requested by DOJ. Thus, there is no question that at least as of March 13, 2009, the Department was aware that the MCSO was represented by Counsel.

More recently, as part of the investigation, attorneys from DOJ Civil Rights Division and Counsel held a meeting on April 30, 2009 in Maricopa County to discuss the investigation and DOJ's attendant discovery requests. On the morning of April 27, 2009, Counsel had a teleconference with the DOJ Civil Rights Division attorneys to discuss disclosure of documents, wherein Counsel reminded DOJ of MCSO's concerted efforts to closely track all documents disclosed as part of the DOJ investigation. On that same morning of April 27, 2009, DHS arrived at MSCO to begin an inspection of MCSO's 287(g) program. Having been through several ICE audits previously, MCSO deputy chiefs afforded DHS agents ICE's customary free access to the documents and employees of MCSO. On April 27 and 28, 2009, DHS agents met with numerous MCSO employees, and reviewed and obtained MCSO documents. On April 28, 2009, DOJ Civil Rights Division attorneys notified Counsel that DHS agents were being invited to the DOJ's meeting on April 30, 2009. Upon Counsel's inquiry, the Department assured Counsel that DHS had no role in the DOJ investigation. However, contrary to DOJ's assurances, Counsel subsequently learned from DHS that, two weeks earlier, DHS agents and DOJ Civil Rights Division attorneys had met to fully set forth their plans of action with MCSO and to devise a document-sharing arrangement, to potentially include the sharing of witness statements. Thus, those documents and witness statements that DHS agents were collecting from MCSO during the DHS inspection were obtained with the express understanding that they would be provided to DOJ for use in the DOJ investigation and any future litigation with MCSO. As a result, the Department, through agents of DHS, knowingly contacted and interviewed represented parties without any legal authorization or consent from Counsel.

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This improper document-sharing arrangement and deceptive scheme to obtain interviews of MCSO employees without Counsel present for purposes of the DOJ investigation, devised and coordinated by DOJ attorneys, was confirmed by Mr. Carlton Mann of the Office of Inspector General of DHS in an April 28, 2009 conversation with Counsel. Mr. Mann stated that two weeks prior to the April 30, 2009 meeting in Maricopa County, he and five DOJ attorneys (including some or all of those attending the April 30, 2009 meeting) tasked with handling the investigation of the MCSO met to set forth a plan of action whereby DHS would collect documents and witness statements as part of their routine audit and share those documents and possibly the witness statements with DOJ with the understanding that DOJ would do the same with information gathered in its investigation. This understanding was reached despite the fact that both investigations were to be completely independent of each other and despite DOJ's repeated assurances that DHS "[did] not have a role in [DOJ's] investigation." See Attachment 1 (E-mail from Je Yon Jung, Senior Trial Attorney, DOJ Civil Rights Division, to Clarisse McCormick, Deputy County Attorney, MCSO (April 28, 2009 12:53 pm MST)). According to Mr. Mann, the DOJ Civil Rights Division attorneys were well aware that DHS would be in Phoenix on April 27, 2009 to start its MCSO inspection. Yet, at no time did DOJ bring the DHS information sharing arrangement to the attention of Counsel. The matter was only addressed after Counsel confronted the DOJ attorneys with this information during the April 30, 2009 meeting.

The rules for contacting represented parties are clearly delineated in the District of Columbia, the State of Arizona and federal guidance for DOJ attorneys. Under the District of Columbia Rules of Professional Conduct

a lawyer shall not communicate or cause another to communicate about the subject of the representation with a person known to be represented by another lawyer in the matter, unless the lawyer has prior consent of the lawyer representing such other person or is authorized to do so by law or court order

Rule 4.2(a). Likewise, Rule 4.2(a) of the Arizona Rules of Professional Conduct states that "a lawyer shall not communicate about the subject of the representation with a party the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so." Rule 4.2 of the ABA Model Rules of Professional Conduct has virtually identical language. Moreover, the Ethical Standards for Attorneys for the Government make it clear that where an attorney does not have the authority or right to engage in an activity the Government can not delegate or direct an agent to do so either. See 28 C.F.R. § 77.4(f).

Further evidence of the Department's coordination with DHS is DHS's most recent document request. See Attachment 2 (E-mail from Justin Brown, Office of Inspections, Office of the Inspector General, DHS to Clarisse McCormick, Deputy County Attorney, MCSO (May 15, 2009 6:45 am MST)). This request goes beyond the matters specifically addressed in, and that are relevant to, the Memorandum of

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Agreement ("MOA") entered into between the MCSO and ICE and relating to the Section 287(g) program. Indeed, as Attachment 2 shows, after coordinating with DOJ, DHS requested information from Counsel that predates the implementation of the 287(g) program and addresses topics well beyond those discussed in the MOA. The requests make clear that these DHS and DOJ investigations have been functionally merged as it is impossible to discern which agency is requesting what information and for what particular purpose.

This scheme appears designed to evade the limitations on the DOJ under Section 14141 (which does not provide subpoena power and therefore effectively requires a cooperative approach) and the limitations on DHS, which may investigate issues related to the 287(g) agreement under the MOA. Based upon a review of the facts and documents, it appears that DHS's investigative powers are being abused as an improper discovery tool for the DOJ. Given that this arrangement was never communicated to Counsel until after the fact, and given the implications of DOJ using DHS and ICE to collect documents and testimony from senior members of the MCSO without Counsel present for possible future use in a federal lawsuit against the MCSO, Counsel will not respond to any document requests from DOJ or DHS until appropriate assurances are made that negotiations with DOJ are not rendered irrelevant by DOJ's surreptitious use of ICE and DHS to contravene any agreements that are reached.

By copy of this letter I am making a formal request that the DOJ Office of Professional Responsibility ("OPR") investigate both this issue and the issue of possible improper political influence discussed below. However, regardless of the outcome of any OPR review of DOJ's conduct, I ask that each of you refer this letter to the appropriate person(s) who can provide assurances that any materials related to DOJ's apparent cooperation with ICE and DHS will be preserved and produced, including:

- e-mails;
- notes;
- Outlook calendar and hard copy calendar entries;
- cell phone records;
- text messages; and
- any other documentation related to the internal discussion of the coordination between DOJ and DHS that would reflect participants in such meetings and the substance of any agreements and any communications about the respective investigations.

Preservation of such evidence is critical to establish what is or is not improperly obtained evidence as this matter moves forward.

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In addition, given that the MCSO has not been provided with copies of the documents obtained by DHS, or notes or transcripts of the interviews of represented witnesses, I request that these be provided at this time.

Finally, I ask that both the DOJ and the DHS name an appropriate senior-level attorney, with the necessary authority, to coordinate with the MCSO and its counsel to explain the terms and level of intersection and cooperation of the multiple investigations so that MCSO can make an appropriate decision on whether to handle the parallel investigations separately, in a coordinated fashion, or to cooperate at all with the DOJ and DHS under the circumstances.

POLITICAL INFLUENCE

The context in which these issues arise raises additional concerns as well. More specifically, in the first two months of the new Administration, the MCSO has become the subject of three ostensibly independent federal investigations: (1) the Civil Rights Division Special Litigation Section's investigation into alleged patterns and practices of Constitutional or legal violations; (2) the Coordination and Review Section's investigation into allegations of discrimination against LEP individuals; and (3) DHS's investigation into the MCSO's 287(g) program (notwithstanding the complete absence of any previous complaints or concern from ICE or DHS under the MOA). When one law enforcement agency becomes subject to three federal investigations in a matter of weeks immediately after a shift of political control in Washington, it is difficult not to speculate that politics played a role in the decision or that policy differences related to hot-button topics such as local law enforcement's vigorous enforcement of immigration-related crimes are being litigated through enforcement actions rather than squarely addressed through appropriate policy-making.

Furthermore, prominent Democratic members of Congress have publicly called for investigation into MCSO and its elected Sheriff, Sheriff Joseph Arpaio. Indeed, in a February 12, 2009 letter sent to both of you, four Democratic members of the House Judiciary Committee made the inflammatory assertion that Sheriff Arpaio's "repeated course of conduct . . . values publicity opportunities over the civil rights of residents of Arizona." See <http://judiciary.house.gov/news/pdfs/Committee090212.pdf>. Despite the prejudicial nature of this statement, at the time of the letter and to this day, there has been no federal investigation establishing any misconduct on the part of MCSO or Sheriff Arpaio. Indeed, when asked if he had been briefed on specific evidence of racial profiling by MCSO, Representative John Conyers said "[n]o, no I haven't been briefed on it. We are getting ready to hold a hearing on it." See <http://www.cnsnews.com/public/content/article.aspx?RsrcID=45078>. Yet, in a moment of apparent unintentional irony, in a February 13, 2009 press release touting the aforementioned February 12, 2009 letter of which he was the first signatory, Representative Conyers noted that "[m]edia stunts and braggadocio are no substitute for fair and effective law enforcement." See <http://judiciary.house.gov/news/090212.html>. In their attempt to spur an investigation of MCSO and Sheriff Arpaio by DOJ, these

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politicians' use of unfounded, inflammatory allegations such as those in the February 12, 2009 letter only serve to heighten concerns about the appearance of politicization of the federal investigative process.

As you are aware, recently Congress and the DOJ Inspector General have issued numerous reports investigating alleged improper political influence over the Department's investigative function by senior Department leaders. Given the possibility that political influence has played a role in the decision to launch these investigations of the MCSO – indeed the explicit and overt efforts by political officials to influence the decision to open these investigations – it is incumbent upon each of you individually and each of your offices and subordinates to preserve all records related to the genesis of these investigations.

I am aware that the Department, in its letter to MCSO, has made the commitment “to conduct the investigation in a fair, objective and efficient manner,” but such assurances ring hollow in light of the Department's “100 Day Progress Report” released in April of 2009, which treats the mere decision to open an investigation of the MCSO as an accomplishment in and of itself notwithstanding that the merits and/or actual facts being investigated have yet to be determined. Indeed, the Civil Rights Division Deputy assigned to the case acknowledged that “media reports” provided the basis for the investigation and that the Department was not yet in possession of facts that would establish a Constitutional violation.

The Department is under an obligation to operate even-handedly and refrain from strong-arm tactics that essentially force law enforcement agencies into a consent decree or Memorandum of Agreement regardless of the existence of any actual Constitutional violations, much less a “pattern and practice” of them. To the contrary, the Department's historical approach to these matters could itself be characterized as a “pattern or practice” of coerced compliance with the Department's law enforcement policy preferences rather than enforcement of Constitutional standards and the laws as written by Congress. Indeed, a review of the Department's conduct of the 14141 program reveals that, after opening an investigation, there are virtually no instances where the Department has not found a purported Constitutional problem and demanded changes in policing policies of the law enforcement agency in question via a consent decree or Memorandum of Agreement. One would think that investigations conducted in a “fair, objective and efficient manner” would, on occasion, reveal that a local law enforcement agency complied with Constitutional standards and that no further action was necessary. It should come as no surprise that my client is skeptical of the Department's assurances of fairness and impartiality in the face of this record and the most recent actions of the Department described above. While in the past other law enforcement agencies may have acquiesced to the Department's strategy of opening investigations without any particularized basis and then seeking a remedy without ever establishing any actual Constitutional violations, this practice is not acceptable to the MCSO. As evidenced by the complete absence of any record of complaints about MCSO's conduct by ICE and

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DHS under its MOA as well as the absence of any record of a "pattern or practice" of Constitutional violations ever having been established in court, the MCSO has worked diligently to uphold all state and federal laws and serve and protect the citizens of Maricopa County. It will vigorously defend its actions and require that the Department establish a particularized factual basis for the investigation, rather than merely a response to conjecture and political posturing by Sheriff Arpaio's critics of his lawful enforcement of state and federal immigration laws.

Finally, I have grave concerns about whether the Civil Rights Division's attorneys assigned to this matter can truly conduct an unbiased and impartial investigation in light of what appears to be the Department's predetermined conclusion regarding the MCSO's law enforcement activities. The Department's decision to essentially issue a press release taking credit for the mere opening of the investigation as some type of civil rights victory makes it very difficult, if not impossible, for the attorneys working on the matter to ultimately conclude that no violation exists. Given the very public mention of the investigation in the "100 Days Progress Report," a conclusion that no further action was warranted would risk embarrassing the DOJ leadership, which has in effect already taken credit for an investigation that has not yet begun. While we would all hope that the attorneys assigned to the investigation would not take the fact that the Department has already cited the investigation as an example of delivering on the President's promise to "reinvigorate federal civil rights enforcement" into consideration, it is asking a great deal of them. I therefore request that the public and the attorneys and agents working on this matter be reminded 1) that no conclusions have been reached regarding the MCSO; 2) that DOJ and DHS leadership would be perfectly satisfied with a complete vindication of MCSO if justified by the facts and the law; and 3) that political considerations and views should not and will not play any role in any decision making.

Thank you for your prompt attention to this matter. Should you have any questions, please do not hesitate to have the appropriate designee contact me at the direct dial listed above.

Sincerely,



Robert N. Driscoll

Cc: Loretta King, Acting Assistant Attorney General
United States Department of Justice

Mary Patrice Brown, Acting Counsel
Office of Professional Responsibility

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Shanetta Y. Cutlar
Chief, Civil Rights Division Special Litigation Section

Richard L. Skinner, Inspector General
United States Department of Homeland Security

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ATTACHMENT 1

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From: Jung, Je Yon (CRT) [mailto:JeYon.Jung@usdoj.gov]
Sent: Tuesday, April 28, 2009 4:30 PM
To: McCormick Clarisse
Cc: Aminfar, Amin (CRT); Weiss, Daniel (CRT)
Subject: Re: Thursday's Meeting

Clarisse-

We certainly don't want to cause concern with the list of attendees. Our goal is to ensure as uniform an approach as possible for Maricopa in its dealings with the federal govt - both DHS as well as the Civil Rights Division. Since our meeting is informational, we believed it would be helpful to have everyone present so that we could compare and contrast the differences between our roles for Maricopa and answer Maricopa's questions. We can certainly address this further in person, and bring in the DHS team after everyone is comfortable with their presence.

Thank you,
Je Yon

From: McCormick Clarisse <mccormc@mcao.maricopa.gov>
To: Jung, Je Yon (CRT)
Cc: Aminfar, Amin (CRT); Weiss, Daniel (CRT)
Sent: Tue Apr 28 17:04:21 2009
Subject: RE: Thursday's Meeting

Je Yon,

MCSO's understanding is that DHS is here to conduct a routine audit. The DHS team has already been introduced to and is working with key contacts at MCSO. Therefore, given that the DHS team has no involvement in the DOJ's investigation, we see no need to have the DHS team attend the meeting on Thursday.

Thank you.

Clarisse

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From: Jung, Je Yon (CRT) [mailto:JeYon.Jung@usdoj.gov]
Sent: Tuesday, April 28, 2009 1:32 PM

5/29/2009

To: McCormick Clarisse
Cc: Aminfar, Amin (CRT); Weiss, Daniel (CRT)
Subject: Re: Thursday's Meeting

Clarisse-

Because there are different federal agencies conducting concurrent investigations/inspections, we thought it would be helpful to your office and client to understand the various agencies' inquiries and requests.

If you disagree please advise as our intention is to assist in an efficient process.

Je Yon

Je Yon

From: McCormick Clarisse <mccormc@mcao.maricopa.gov>
To: Jung, Je Yon (CRT)
Cc: Aminfar, Amin (CRT); Weiss, Daniel (CRT)
Sent: Tue Apr 28 16:25:39 2009
Subject: RE: Thursday's Meeting

Je Yon,

You stated that the members of the DHS inspection team have no role in the MCSO investigation, but it would be helpful to have them at the meeting. Frankly, I am unclear how it would be helpful to have them present if they have no role in the investigation. Could you please explain further so I can accurately explain it to my client? Thank you.

Clarisse

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From: Jung, Je Yon (CRT) [mailto:JeYon.Jung@usdoj.gov]
Sent: Tuesday, April 28, 2009 12:53 PM
To: McCormick Clarisse
Cc: Weiss, Daniel (CRT); Aminfar, Amin (CRT)
Subject: RE: Thursday's Meeting

Clarisse-

I am getting confirmation on the names of the DHS team members who are planning on attending our Thursday meeting. I will forward it to you as soon as I receive them. As for their role in our MCSO investigation, they do not have a role in our investigation. However, because they are another federal agency conducting a separate DHS inspection during the same week that we are in Phoenix for our introductory meeting, we thought it would be helpful to have all of the various federal agency representatives in the same room.

Thank you,

Je Yon

From: McCormick Clarisse [mailto:mccormc@mcao.maricopa.gov]
Sent: Tuesday, April 28, 2009 2:59 PM
To: Jung, Je Yon (CRT)
Subject: RE: Thursday's Meeting

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Je Yon,

If you could provide me with their names and explain their role in the MCSO investigation, I would appreciate it.

Thank you.

Clarisse

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From: Jung, Je Yon (CRT) [mailto:JeYon.Jung@usdoj.gov]

Sent: Tuesday, April 28, 2009 11:16 AM

To: McCormick Clarisse

Cc: Aminfar, Amin (CRT); Weiss, Daniel (CRT)

Subject: Thursday's Meeting

Clarisse-

I wanted to let you know that I believe some of the members of the DHS inspection team that is down in Phoenix this week may also be joining us for our 9:00 a.m. meeting with your office and members of the MCSO.

If you need me to get a confirmation on their names, I can do that. Just let me know.

Thanks,

Je Yon

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ATTACHMENT 2

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From: Brown, Justin [mailto:justin.brown@dhs.gov]
Sent: Friday, May 15, 2009 6:45 AM
To: McCormick Clarisse
Cc: Barron-Irby Irene; Outten-Mills, Deborah
Subject: RE: DHS Interviews of MCSO Officers

Clarisse -

As we discussed yesterday, I am forwarding a list of items we requested from the Sheriff's Office but have yet to receive in part or in full, as well as a number of new items we would like.

- Arrest, prosecution, and case disposition data for the 377 287(g) cases we identified and provided through the ICE SAC office the week before our visit
- A synopsis of training (topics covered & hours dedicated to the coverage) MCSO deputies receive on 4th amendment compliance, civil rights/civil liberties protections, and guidance on non-discrimination or profiling on the basis of race or ethnicity (e.g., a breakdown of the peace officer academy training MCSO deputies receive)
- MCSO Off-duty work policy
- MCSO Use of Force policy and form(s)
- MCSO Critical Incident Review policy and description of the critical incident review board function, process, and composition (if not already discussed in the policy)
- Internal Affairs spreadsheet listing complaints and investigations related to 287(g) officers
- MCSO annual statistics on calls for service from 2005 to the present, broken out by the reported basis for the call (e.g., domestic violence, traffic accident response, etc.)
- Operational plans for all operations involving 287(g) officers, as well as associated intelligence reports, data, and information on the basis for conducting each operation
- Operational statistics on stops, citations, and arrests by ethnicity and charge for each of the above operations (if available)
- Overall MCSO Human Smuggling Unit statistics on stops, citations, and arrests by ethnicity and charge (if available)
- MCSO Human Smuggling Unit annual operating cost
- MCSO 287g jail support annual cost

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These materials will provide us with the documentation and information we need to properly describe the 287(g) program in Maricopa County. We appreciate the effort that it will take to assemble them, and your continuing assistance in our review.

Please contact me if you would like clarification on any of the above items or if MCSO requires further information to properly identify what we are seeking.

Regards,

Justin

Justin H. Brown
Office of Inspections
Office of Inspector General
Department of Homeland Security
202.254.4219 (phone)
202.254.4304 (fax)

5/29/2009