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VIA FACSIMIL TO: (202) 514 8336 AND (570) 348-2037 and by U.S.
Mail

November 25, 2008

Mark Kappelhoff
Chief, Criminal Section
United States Department of Justice
Civil Rights Division
950 Pennsylvania Avenue, N.W.
Criminal Section, PMB
Washington, D.C. 20530

Benton J. Campbell
United States Attorney
Eastern District of New York
147 Pierrepont St.
Brooklyn, N.Y. 11201

Dear Mr. Kappelhoff and Mr. Campell:

This complaint, submitted on behalf of the Latino residents of Suffolk County, New York, alleges that Suffolk County, whose law enforcement agencies receive federal funds, deprives Latinos equal access to those agencies, both by failing to adequately investigate crimes committed against Latinos by whites and by discouraging Latinos from even seeking assistance from local law enforcement agencies in the first place. The effect of this inadequate, discriminatory treatment has been to allow crimes against Latinos to flourish.

As a consequence, Latinos in Suffolk County now live in daily fear for their physical well-being, victims of hate crimes at least on a weekly basis. During the week Marcelo Lucero was killed, there were five hate crime incidents with eight victims, maybe more. On the street Latinos are regularly assaulted with racial taunts, beer bottles, slashed tires, and the threat of physical assault. Sometimes these crimes are particularly brutal and make headlines. More often, the crimes remain unsolved, far from the public eye. Tragically, the recent assault against Marcelo Lucero, in which the assailants surrounded him, taunted him, and then stabbed him, was fatal.

These anti-Latino hate crimes did not come into existence in a vacuum. The gang of young men that attacked and murdered Mr. Lucero, simply because he was Latino, had long operated with impunity in its weekly rite of driving around the streets to find a Latino to beat up. They had already attacked four other Latinos in two separate incidents that very same day. Both incidents were reported to the police; after interviewing the victims, the officer effectively closed the case concluding there was no further investigation, ignoring the glaring common thread between these and likely dozens of other reports: an epidemic of hate crimes against Latinos had erupted in Suffolk County.

That this ongoing criminal activity had continued unabated month after month reflects the Police Department's disparate, deficient treatment of requests for help by Latinos. Two men charged in the Lucero murder had actually been detained by police three days before after being identified by a Latino who had been shot at by youths yelling racial epithets. After questioning, the police released the young men without filing charges or further investigation. Had the police done their job and arrested them, Marcelo Lucero might still be alive. Sadly, this is just one instance in a lengthy series of discriminatory actions depriving Latinos of equal access to law enforcement agencies and their services.

The actions, or inaction, of Suffolk County and its law enforcement agencies require investigation by the Department of Justice (DOJ) with respect to their discriminatory treatment of Latinos. Similar patterns and practices by local law enforcement agencies have in the past warranted DOJ investigations and, on occasion, the requirement that departments enter into agreements with DOJ to remedy discriminatory practices.

I. Legal Principles: The Duty to Protect Racial and Ethnic Minorities

The behavior of Suffolk County officials and its Police Department constitutes racial and national origin discrimination in violation of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000d and Section 809(c) of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. 3789d(c)(3). Suffolk County has a pattern and practice of administering justice that has the effect of discriminating against Latinos, in violation of 42 U.S.C. § 14141. The Office of Civil Rights has investigated numerous local law enforcement agencies as a result of complaints of discriminatory administration of justice. *See, e.g., U.S. v. City of Columbus, Ohio*, 99 CV 1097 (S.D. Ohio, 2000) (King, Magistrate J.); *U.S. v. State of New Jersey, et al.*, 99 CV 5970 (D.NJ)(MLC).

Local law enforcement must provide services to all residents without discriminating on the basis of race. In *Neighborhood Action Coalition v. City of Canton, Ohio*, 882 F.2d 1012 (6th Cir. 1989), the Sixth Circuit held that plaintiffs alleging discriminatory provision of police protection had standing to sue pursuant to Title VI and other civil rights statutes. As the facts detailed herein make clear, Latinos do not have access to the police protection to which they are entitled. Despite a rise in hate crimes against Latinos in the country as a whole and Long Island in particular, Suffolk County has failed to take steps that encourage reporting of hate crimes and has failed to follow up on such reports when they are made. In analogous circumstances, OCR has alleged that a law enforcement agency's failure to create adequate complaint procedures violates Title VI. *See, e.g., U.S. v. City of Columbus, Ohio*, 99 CV 1097 S.D. Ohio, 2000)

(King, Magistrate J.) (alleging, in part, that failure to provide access to civilian complaint procedures against the police violated Title VI).

Suffolk County has failed to protect its Latino residents from injury by fellow Suffolk County residents. It is well-settled that federal-funding recipients may be liable for failure to protect constituents from injury by third parties. In *Davis v. Monroe County Board of Education*, 526 U.S. 629 (1999), a parent successfully sued a school pursuant to Title IX for failing to protect her daughter from student-on-student harassment. The Supreme Court found that funding recipients “may be liable for their failure to respond to the discriminatory acts of certain nonagents.” *Davis* at 643. Like the federal funding recipients in *Neighborhood Action Coalition* and *Davis*, the Suffolk County Police Department is obliged to protect its constituents in a non-discriminatory manner. It is the kind of behavior that has, in the past, warranted investigations of local police departments by the Department of Justice and, on occasion, the requirement that departments enter into agreements with DOJ to remedy discriminatory practices.

The behavior of Suffolk County officials and its Police Department constitute racial and national origin discrimination in violation of Title VI of the Civil Rights Act of 1964. Accordingly, we ask that the Department of Justice undertake an immediate investigation into this matter and take appropriate remedial action.

In the sections below, we elaborate upon the specific misconduct that warrants further investigation by the DOJ.

II. The Facts: Suffolk County’s Failure to Protect Its Latino Community.

There can be little disputing the notion that a police department cannot adequately protect a vulnerable community unless there exists sufficient trust so that community members are willing to report crimes committed against them. To engender that trust, two things must happen: first, public officials must consistently emphasize that discriminatory conduct towards any community will not be tolerated, and, second, the police department must show that it is willing to investigate fully and fairly crimes reported to it by members of that community. Suffolk County’s public officials and its police have woefully failed their respective obligations. Public officials have repeatedly inflamed public resentment against the Latino community, even after brutal hate crimes had been committed against it, and the police have, until the Lucero murder, failed to fully and fairly investigate crimes upon Latinos. As a result Latinos have suffered numerous violent attacks at the hands of whites and the police response has been so inadequate that some Latinos have even stopped reporting those assaults.

A. Suffolk County Leaders Have Repeatedly and Recklessly Expressed Hostility Towards Latinos Even After Brutal Hate Crimes Had Been Committed Against Them.

The hostility towards Latinos on Long Island first gained national attention in 2000 when two Latino laborers were picked up by several white men in Farmingville posing as contractors who then took them to an isolated location and beat the two laborers so severely that they were

hospitalized for the extensive injuries they sustained.

Shortly thereafter in 2001, in a public hearing on a bill was proposed penalizing contractors who hire undocumented workers, Suffolk County Legislator Michael D'Andre stated that if his hometown was ever "attacked" by an influx of Hispanic day laborers as Farmingville had:

"[W]e'll be up in arms; we'll be out with baseball bats."

In 2004 five high school students burned down of the home of a Latino family in the middle of the night. The family, targeted for being Latino, might have been trapped upstairs and killed but for being awakened by the sound of sirens outside. The ringleader, angry over a conflict with Latinos, carried KKK photos in his wallet. Overall, in 2004 Suffolk County reported 15 hate crimes were committed against Latinos.

In 2005 Stephen Levy took office after having campaigned on a promise to crack down Latino laborers. Though local lawmakers regularly complained about immigration, Mr. Levy went much further than most. After his inauguration, Mr. Levy promoted five different anti-immigrant bills in the County legislature. He quickly initiated an effort to deputize local police officials as federal immigration agents so as to allow them to enforce federal immigration law. This effort failed in part because of the opposition of police union. As I am sure DOJ is aware, police chiefs and police organizations across the country have opposed attempts to have local police help enforce federal immigration laws because such efforts cut off communication with the Latino community, discouraging victims from coming forward if they or any of their family are of uncertain immigration status, allowing crime to run rampant in that community.

Mr. Levy then had Suffolk County police play a prominent role in a discriminatory scheme in which certain homes occupied by Latinos were targeted for eviction of tenants without prior notice. Ten homes in Farmingville, tenanted exclusively by Latinos, were subject to these unprecedented proceedings, apparently triggered by complaints from white neighbors. Landlords were not even given prior notice of the offending housing code violations upon which the evictions were based. Mr. Levy's own appointees, the Director of the Suffolk County Office of Minority Affairs and nearly half the members of his Hispanic Advisory Board, resigned in protest of his handling of these evictions. Lawyers from this office filed a federal complaint on behalf of the evicted tenants to have these "no notice" evictions halted and obtained an order from a district court judge requiring Brookhaven Township to halt these evictions based upon a finding that they violated the Fair Housing Act. *The Workplace Project, Inc. v. Town of Brookhaven*, Civ. No.: 05-4323 (E.D.N.Y.) (JS).

In or about this same time, Mr. Levy initiated a number of policies and practices that dramatically increased the number of immigrants turned over to the federal government for deportation. First, as a matter of policy, Suffolk County police would inquire into the immigration status of anyone who was arrested, checking their names against a federal database. In reality, Suffolk County police started the practice of inquiring and investigating the immigration status of Latinos they came into contact with even if they were not being arrested, such as drivers and passengers of cars stopped by police for possible traffic violations. These stops and inquiries occurred largely in and around Farmingville, where a great proportion of the

Latinos in the County live.

At about the same time, he proposed anti-loitering legislation to prohibit these Latino laborers from standing on side walks and street corners on county roads from soliciting employment in Suffolk County. Though this legislation never passed, he did then successfully propose legislation that required all business owners doing business with the county to verify the lawful immigration status of their employees, a move that he said would affect more than 6,000 companies. Ironically, after having spent tens of thousands of dollars on this program and raiding 33 contractors, only one instance of an undocumented employee was ever indentified. He also co-founded a national organization, called Mayors and Executives for Immigration Reform, that allied itself with a number of anti-immigration organizations such as the so-called hate group FAIR (Federation for American Immigration Reform) and often appeared on Lou Dobbs and other national media to promote these and other actions by local governments.

The aim of these measures, Mr. Levy said, was to protect residents who “do not want to see their neighborhood turned upside down.” Apparently, he presumes that someone without lawful immigration status is someone who destroys neighborhoods.

Other County legislators also expressed great hostility towards Latinos. In early 2007, County Legislator Elie Mystal referred to Latino laborers gathering to look for work in this way: "If I'm living in a neighborhood and people are gathering like that, I would load my gun and start shooting, period. Nobody will say it, but I'm going to say it."

More recently, Legislator Jack Eddington - whose district includes Patchogue where Marcelo Lucero was murdered - singled out two speakers who wanted to use Spanish translators at a public hearing and demanded to know whether they were legal. He also told undocumented immigrants “You better beware” and that “If you’re here in Suffolk County illegally, you will not stay here.” *New York Times*, March 1, 2007, *Suffolk Plans a Crackdown on Laborers There Illegally*, by Corey Kilgannon.

There can be no question but that these actions and statements by Suffolk County leaders create an atmosphere that discourages Latinos from reporting crimes committed against them and may even give encouragement to those tempted to commit such hate crimes against Latinos. As Phil Ramos, a state assemblyman from the County, stated:

“The constant rhetoric coming from some elected officials has the impact of creating an atmosphere in which a crime like this [murder of Marcelo Lucero] can occur.....We need mature leadership in this county that doesn’t pander to the worst qualities in our residents.”

C. Members of the Latino Community Are Continuously Subject to Acts of Violence By Whites.

As noted above, crimes are regularly being committed against Latinos in Suffolk County. Further, as noted above, hate crimes are being committed against Latinos in Suffolk County on a weekly basis, despite Suffolk County’s claim to the contrary. The

now well-reported story of the gang of seven young men who murdered Marcelo Lucero demonstrates this.

The District Attorney stated that these young men *regularly engaged* in what they called “beaner hopping” and this was far from the first time that they, unprovoked, had assaulted innocent Latinos on the streets of Suffolk County. As described in the New York Times:

“The death of Marcelo Lucero, ... was the grim culmination of a violent, racially driven pastime that seven local teenagers routinely engaged in called ‘beaner hopping,’ prosecutors told a court on Thursday. ‘To them, it was a sport,’ Mr. Spota said in a news conference after the defendants were arraigned. ‘We know for sure that there are more victims out there.’”

... Around 5 a.m. on Nov. 8, two of the teenagers, Nicholas Hausch and Jordan Dasch, both 17, drove around Patchogue armed with a BB gun. After spotting a Hispanic man in a driveway, Mr. Hausch aimed the gun and fired, prosecutors said, hitting the man, Marlon Garcia, several times. That evening, the two youths met up with five of their friends — they knew each other from Patchogue-Medford High School — drank beer in a park and then set off with the intention of hunting down, and hurting, Hispanic men. They first drove around their hamlet of Medford, but, failing to find potential victims, set off for Patchogue, prosecutors said, an adjoining town that is more ethnically diverse. There, they spotted another Hispanic man, Hector Sierra, walking on a downtown street and, according to prosecutors, jumped out of the car and surrounded Mr. Sierra, who managed to escape. The youths drove off, and shortly before midnight, spotted Mr. Lucero, who was walking along the street with his friend Angel Loja. The teenagers got out of their car, taunted the men using racist slurs and then started hitting them.

New York Times, *Teenagers’ Violent ‘Sport’ Led to Killing, Officials Say*, November 11, 2008 (emphasis added). Five days earlier, three of the defendants had gone out driving with the intent of “beaner hopping” and found a Latino man who they punched and knocked unconscious. The victim of that incident has not yet stepped forward.

Perhaps most disturbing of all, one of the men stated to the police “I don’t go out and do this very often, maybe once a week.”

Other news reports confirm the fact that Latinos are regularly assaulted on the streets of Suffolk County.

Latinos say the attack against Mr. Lucero, if not his murder, was foretold. Some report being threatened and physically harassed in the streets, with bottles thrown at them and their car windows smashed during the night. Anti-immigrant epithets and racially motivated bullying are common in the hallways of the schools, children say.

New York Times, November 14, 2008, *A Killing in a Town Where Latinos Sense Hate*, by Kirk Semple.

Other reports confirm an ongoing pattern of anti-Latino hate crimes in the Patchogue area, according to Hispanic residents.

“These kids are coming here and harassing us more often,” said one careworn, bike-riding mourner from a neighborhood that seems less of a haven than it used to. Old enough to qualify for AARP membership, he disclosed that he is Salvadoran but refused to give his name “because the kids see me around and know who I am.”

“At night they throw rocks and bottles,” he said. “They heckle us and try to engage us; they want a fight.” Sometimes the kids do worse things. “They slashed my tires outside the library one afternoon. A lot of them carry knives. The ones who did this to Marcelo had no compassion, no morals, no nothing.”

New York Times, “Long Island” section, p. 1, November 24, 2008, *Immigrants Say Slaying Brings Bias To The Fore*, by Robin Finn.

Local elected officials also confirm that Latinos are regularly being assaulted and harassed. The Mayor of Patchogue, Paul Ponteri, said he had just learned that Hispanic kitchen workers in his town feared their trips home after work at night for fear of being assaulted. Phil Ramos, a state assemblyman, and Ricardo Montano, a county legislator, have stated that “attacks and harassment of Hispanics are common.” Lastly, as detailed in the following section, there have been a number of hate crimes that took place in a section of Suffolk County, the East End section, that do not get charged as hate crimes because of the inadequacies in the police’s ability to investigate hate crimes.

C. Suffolk County Police Have Failed To Fully And Fairly Investigate Crimes Committed Against Latinos By Whites

As is evident above, substantial numbers of hate crimes being committed against Latinos that are either not being reported to the police or are not being listed as hate crimes given that Suffolk County assert that there was only one hate crime committed against a Latino in all of 2007. A couple of the stories below, some well reported in the press, make clear that when Latinos have turned to the police to report crimes against them, the police have not conducted full and fair investigation, which has the effect of making victims reluctant to report a crime in the future.

East End. About a year ago, a 17 year old neo-Nazi was arrested in East Hampton for chasing a Latino high school student with a running chainsaw shouting anti-Latino slurs. The police did not include a single hate crime charge among the charges. The police asserted that they could not file a hate crime charge against a minor. This is false. In addition to the murder and manslaughter charges filed last week, all seven men were charged with hate crimes even though most of them were 16 or 17 years old.

Luis Ochoa was attacked by a former policeman screaming racist epithets. The charges were ultimately dropped as local police said there were not enough witnesses, even though the assault was witnessed by 12 members of the St. Theresa's Latino choir, some of whom in fact

pulled the 6' 4" assailant off of Mr. Ochoa while he was kicking and pummeling Mr. Ochoa. Mr. Ochoa suffered a split lip, bruising to his torso, and severe traumatic stress. The hate crime charges were dropped because the prosecutor stated there were not sufficient bodily harm.

We have been told that there are half a dozen other hate incidents that have occurred on the East End section of Suffolk County that local authorities did not call in the Hate Crime Investigations Unit of the Suffolk County police or otherwise file hate crime charges. Apparently, Suffolk County Police by tradition do not investigate crimes on the East End. This leaves hate crime investigations to police who lack specialized training to investigate hate crimes. As evidenced by the six incidents above, the end result is that hate crimes are not adequately investigated or charged. In fact, we are not aware of any anti-Latino hate crime charges having been filed the past few years by the police on the East End.

One local Latino who wishes to remain anonymous reports the following experience. This summer he was walking home from work, and a group of 10 or more white youths attacked him in Patchogue. He tried to run away but the group, some of who were on bike surrounded him, and punched/kicked him in face and body, leaving marks and bruises. They insulted him, telling him to "go home" or back to where he came from. He eventually called 911 and uniformed Suffolk county police responded and took him to Patchogue Pct/office, where they interviewed him and took photos of his injuries. At the time, no further action was taken.

Joseph Hernandez. Mr. Hernandez is a 50-year-old disabled Puerto Rican who has limited use of his leg and whose left arm is paralyzed. He has lived in Huntington for a couple of years while attending Suffolk County Community College. Paul W. Shaunessy, age 52, moved to his neighborhood in April, 2008, and has created problems for Mr. Hernandez and his other neighbors. He had left a number of notes under Mr. Hernandez doorways about various issues and made offensive statements to Mr. Hernandez when he saw him on the street.

On Sunday Oct 19, Mr. Shaunessy came up the stairs and began banging on Mr. Hernandez's door. Mr. Hernandez opened the door to try to get him to stop. He asked him to leave without any success. Mr. Shaunessy became agitated and jumped on Mr. Hernandez and began to pull off his clothes (he was wearing pajamas) while squeezing his scrotum. Mr. Shaunessy even pulled Mr. Hernandez's undergarments off of him.

At one point, Mr. Hernandez was able to reach a fire extinguisher and struck him twice to try to get him off of him. When he got him to stop, Mr. Shaunessy said "Thank you." At that point, apparently two women who were passing on the street heard the commotion and called 911. When the police arrived, instead of taking Mr. Hernandez to the hospital they insisted on taking him to the station because they said they wanted to "get this guy."

A Detective Michael Vopcelli began to interview him but then started to read Mr. Hernandez his Miranda rights. When Mr. Hernandez asked if he was being arrested, the detective replied that they do this with all witnesses. Then they said that they need him to sign a Miranda card before they continued. He did so thinking that this was fine. But then they handcuffed him and began interrogating him.

During the interrogation the Detective asked Mr. Hernandez: "What are you?" Mr. Hernandez did not understand the question so he said, "do you mean am I a citizen?" The Detective responded, "No.....I'm a WAP [a derogatory term for Italians]. What are you?" He explained that his parents were Puerto Rican. The Detective then said, so you are a Puerto Rican. Then he was then taken to Central Islip and held in a cold cell for 14 hours. When he was taken to a second police station on Park Avenue, the police there were apologetic and said "we have nothing to do with this, it's up to the detective." He said he was treated fine by all the other police officials involved except for the detective.

The police have refused to charge the neighbor. He recorded the attack on a tape recorder he uses for school and is willing to provide a copy of that tape. He is outraged by what happened to him and believes that no one can turn to the Suffolk County police when they are attacked if they are Latino. He has been afraid to return to his home since his neighbor attacked him.

Conclusion

For the above reasons, we ask that the Department of Justice undertake an immediate investigation into this matter and take appropriate remedial action. We stand ready to assist the Department in any manner we can and would like to meet with the Department to discuss this matter as soon as possible.

Sincerely,

A handwritten signature in cursive script that reads "Cesar A. Perales". The signature is written in black ink and is positioned above the typed name and title.

Cesar A. Perales
President and General Counsel