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April 29, 2010

**VIA FACSIMILE, CERTIFIED AND ELECTRONIC MAIL**

Chief Tim Hayworth  
Zebulon Police Department  
Town Hall  
1003 North Arendell Avenue  
Zebulon, NC 27597

Sheriff Donnie Harrison  
Wake County Sheriff's Office  
PO Box 550  
Raleigh, NC 27602

Re: Illegal and Unconstitutional License Checkpoints Outside Iglesia de Dios  
"Catedral de Jesus"

Dear Chief Hayworth and Sheriff Harrison:

Undersigned counsel for the American Civil Liberties Union of North Carolina (ACLU-NCLF), the North Carolina Justice Center (the Justice Center) and the Southern Coalition of Social Justice (SCSJ) have been contacted by members of the Iglesia de Dios "Catedral de Jesus," regarding repeated license checkpoints that are being set up outside the church during church services and other church-related activities. Specifically, Pastor Angelo Cabrera and members of his congregation have informed us that the Zebulon Police Department (ZPD) has made a routine practice of selecting the entrance of the church at 717 S. Arendell Avenue, to set up license checkpoints during regularly scheduled church events, such as church services on Saturday nights, from 7:30 p.m. to 9:30 p.m. Church service begins at 7:30 p.m. We are copying Sheriff Harrison on this letter as well, as it appears that deputies from the Wake County Sheriff's Office (WCSO) may also have participated in these checkpoints.

Members of the congregation report being targeted by police, both in the designation of the checkpoint location itself, and also in terms of discriminatory treatment at these checkpoints. Specifically, members of the congregation report that police officers routinely "wave through" Caucasian and African-American drivers, stopping only those drivers who appear to be Latino. Additionally, members of the congregation report being harassed *on church property* by Zebulon police officers seeking to learn the identity of various congregants and even entering the sanctuary and interrupting church service. These scare tactics by police have caused a significant decrease in church attendance, as many congregants are afraid to attend church lest they be harassed by law enforcement in the process.

To the extent that these actions are occurring, they are illegal and unconstitutional under the United States and North Carolina Constitutions, as well as under North Carolina statutory law. First, if the location of a license checkpoint is selected based on race or ethnicity, that checkpoint violates both the Fourth and Fourteenth Amendments to the United States Constitution, as it

amounts to unlawful racial and ethnic profiling and consequently, an unreasonable seizure. *See Washington v. Davis*, 426 U.S. 229, 239, 96 S.Ct. 2040 (1976) (“The central purpose of the Equal Protection Clause of the Fourteenth Amendment is the prevention of official conduct discriminating on the basis of race.”); *Brown v. Texas*, 443 U.S. 47, 50, 99 S.Ct. 2637 (1979) (outlining the three-part test for determining the reasonableness of a seizure under the Fourth Amendment). This profiling is even more pronounced in situations, as described here, in which non-Latino drivers are “waved through” a checkpoint. Further, to the extent that the checkpoint is being set up by ZPD or WCSO for the purpose of checking immigration status, that purpose is unlawful, as neither ZPD nor WCSO have authority to determine immigration status on the street.<sup>1</sup> Finally, to the extent that these checkpoints are “spontaneous, roving, unplanned, unsupervised [or] unbounded,” they violate the Fourth Amendment for that reason as well. *State v. Rose*, 170 N.C. App. 284, 298, 612 S.E.2d 336, 345 (2005).

Further, to the extent that these checkpoints are being placed over and over again in the same location, they also violate North Carolina state law. N.C. Gen. Stat. § 20-16.3A provides that “[t]he placement of checkpoints should be random or statistically indicated, and agencies shall avoid placing checkpoints repeatedly in the same location or proximity.”

As appears to be the case in Zebulon, the reality is that these types of license checkpoints are often no more than covers for blatant racial and ethnic profiling of the Latino community, including those members of the community who are undocumented *as well as those members who are American citizens and lawful permanent residents of North Carolina*. The undersigned organizations are investigating similar license checkpoint schemes all over the state of North Carolina and are very concerned about the serious civil rights violations against the North Carolina Latino community that are occurring at these checkpoints.

Additionally, since your officers are preventing or dissuading these individuals from attending the church of their choice, Zebulon and Wake County may also be violating these individuals’ free speech and religion rights under the First Amendment to the United States Constitution.

Consequently, we urge you to immediately cease operation of these checkpoints outside Iglesia de Dios “Catedral de Jesus.” The serious constitutional violations outlined above are underscored by the real harm that these types of race-based checkpoints have on a community. The Ninth Circuit described the harm in this way:

Stops based on race or ethnic appearance send the underlying message to all our citizens that those who are not white are judged by the color of their skin alone. Such stops also send a clear message that those who are not white enjoy a lesser degree of constitutional protection—that they are in effect assumed to be potential criminals first and individuals second.

*U.S. v. Montero-Camargo*, 208 F.3d 1122, 1135 (9th Cir. 2000) (holding that defendants’ Hispanic appearance was not proper factor to consider in determining whether Border Patrol agents had reasonable suspicion to stop them, in light of large number of Latino persons in the area).

Please advise us as soon as possible that these unlawful checkpoints have ceased.

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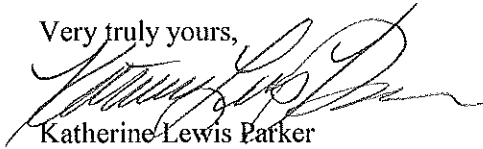
<sup>1</sup> WCSO’s 287(g) agreement with Immigration Customs Enforcement (ICE) is limited to checking immigration status in Wake County Jail. ZPD has no agreement with ICE at all.

Additionally, pursuant to the North Carolina Public Records Act, N.C. Gen. Stat. § 132-1, please provide the following:

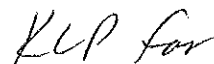
- All documents relating to the planning and/or administration of any type of checkpoint administered by ZPD from January 2006 through the present.
- All documents relating to the planning and/or administration of any type of checkpoint administered by WCSO from January 2010 through the present.<sup>2</sup>
- All documents related to ZPD's compliance with the North Carolina Racial Profiling Act, N.C.G.A. § 114-10.01, from January 2007 through the present.
- All documents related to WCSO's compliance with the North Carolina Racial Profiling Act, N.C.G.A. § 114-10.01, from January 2007 through the present.
- All documents related to the identity of individuals stopped, detained, ticketed, and searched at any checkpoints located at or within one mile of 717 S. Arendell Avenue, including the race and ethnicity of anyone stopped, detained, ticketed, searched and/or arrested.
- All documents related to the charges made against anyone ticketed and/or arrested at any checkpoints located at or within one mile of 717 S. Arendell Avenue.

Please provide a response to this request by **Friday, May 14, 2010**. Please do not hesitate to contact us with any questions, comments, or concerns you may have.


Very truly yours,



Katherine Lewis Parker  
Legal Director, ACLU of North Carolina Legal  
Foundation



Jack Holtzman, Staff Attorney  
North Carolina Justice Center



Anita Earls, Executive Director  
Southern Coalition for Social Justice

cc: Mayor Robert S. Matheny, Town of Zebulon  
Eric Vernon, Esq., Zebulon Town Attorney  
John Maxfield, Esq., Wake County Sheriff's Attorney

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<sup>2</sup> Because ACLU-NCLF has already been investigating WCSO and other 287(g) counties for their operating of license checkpoints, we already have checking station forms from WCSO from 2006 – 12/09.