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MARTY J. JACKLEY
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February 3, 2015

United States Attorney General Eric Holder
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Holder,

On October 3, 2014, I expressed to you significant concerns regarding the Department of Justice's handling of its investigation into the federal EB-5 immigration program in South Dakota. Those concerns included both the conduct of the Department of Justice's Public Integrity Section and the appearance of political motivation associated with the handling and timing of this investigation. The absence of any response in the face of such serious concern is disappointing, and I am kindly renewing my request that these matters be reviewed and addressed in a timely fashion.

The actions of the DOJ's Public Integrity Section during its involvement reflect poorly on all of law enforcement including the local federal authorities that worked in cooperation with state and local authorities to properly investigate this matter. As you know, the appearance of political motivation can affect our citizens overall trust in the integrity of investigations. Law enforcement and the people of South Dakota deserve better from our Department of Justice.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marty Jackley".

Marty J. Jackley
ATTORNEY GENERAL

MJJ/lde

Enclosure: October 3, 2014, correspondence with attachments

cc: Janice M. Rodgers, Director
Departmental Ethics Office

STATE OF SOUTH DAKOTA



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MARTY J. JACKLEY
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October 3, 2014

United States Attorney General Eric Holder
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Holder,

As the Attorney General and former United States Attorney for South Dakota, I have deep concerns in relation to the Department of Justice's handling of its investigation into the EB-5 Visa Program in South Dakota. I am therefore requesting a review into that investigation that was conducted by the Public Integrity Section of the Department of Justice and the ultimate determination of whether politics has inappropriately driven decisions associated with this matter. From the onset, I want to make clear that my concerns neither pertain to nor are they directed toward any actions of the local federal authorities.

On April 29, 2010, federal authorities received a notice of EB-5 immigration violations from attorney Steven Sandven involving Joop Bollen. Three years later, on March 18, 2013, without notice to the State Attorney General, federal authorities served a grand jury subpoena on the Governor's Office of Economic Development (GOED) in relation to vouchers and the EB-5 Program at Northern Beef Packers. **See Attachment A.** (March 18, 2013, Subpoena to Testify Before Grand Jury.)

On April 8, 2013, the Governor of South Dakota's general counsel provided the South Dakota Attorney General with the federal subpoena and requested a state investigation. **See Attachment B.** (April 8, 2013, correspondence from Jim D. Seward to Attorney General.) During the process, the Governor's Office of Economic Development's counsel raised concerns regarding Department of Justice attorney Anthony Phillips' aggressive tactics including, among others,

serving subpoenas on cooperating witnesses at their place of employment. **See Attachment C.** (June 7, 2013, correspondence from GOED Attorney Paul Bachand to DOJ Attorney Phillips.)

Further concerns were raised on July 8, 2013, wherein DOJ attorney Phillips appears to have failed to attend a previously arranged joint meeting with the South Dakota US Attorney's Office, DCI Agents and GOED Attorney Bachand. **See Attachment D.** (July 8, 2013, correspondence from GOED attorney Paul Bachand to DOJ attorney Phillips.)

On August 22, 2013, DOJ attorney Phillips was further advised of a potential direct violation of the rules of professional conduct governing attorneys practicing in South Dakota (Rule 4.2) in relation to an interference with an attorney-client relationship. **See Attachment E.** (August 22, 2013, correspondence from Roxanne Giedd, Deputy Attorney General, Chief Civil Litigation Division, to DOJ attorney Phillips.)

After advising DOJ attorney Phillips, I authorized the moving forward of a state criminal complaint against Richard Benda on October 8, 2013, at 2:36 p.m., and the summoning of a state grand jury for October 28, 2013. **See Attachment F** (Draft Complaint) and **Attachment G** (October 11, 2013, Grand Jury Summons letter). On October 22, 2013, local law enforcement authorities advised state law enforcement that Richard Benda, the subject of the proceedings, was found deceased in a rural shelter belt. I notified attorney Phillips and requested federal law enforcement authorities become a part of the death investigation which they appropriately did. Both the forensic pathologist and the coroner have ruled the death a suicide which is consistent with law enforcement's death scene investigation.

On November 21, 2013, as Attorney General, I provided the Governor of South Dakota with a summation of the findings of the Attorney General's investigation. **See Attachment H.** (November 21, 2013, correspondence from Attorney General Jackley to Governor Daugaard.)

Over the past year, the results and summaries of the death and financial investigations have been released through proper Court Orders in relation to Legislative Audit and the civil litigation investigations, as well as public records requests and the South Dakota Government Operations and Audit Committee's statutory authority. Our office has been sued based upon the refusal to release further information on the investigation. The Courts have thus far agreed that said additional materials are protected or privileged, but an appeal to our highest state court is pending.

On September 10, 2014, over four years after the initial EB-5 violation report to federal authorities and 18 months after the federal subpoena to the Governor's

Office of Economic Development, the Department of Justice has advised the South Dakota Legislature that "The Department does not generally comment on the status or existence of any ongoing or potential law enforcement investigations, including providing information about investigations regarding a particular subject matter or individual that does not result in public charges." **See Attachment I.** (September 10, 2014, correspondence from DOJ Assistant Attorney General Peter J. Kadzik to State Senator Larry Tidemann, Chair, GOAC).

Indeed, I concur and generally follow this practice; however, the DOJ's public handling of this matter, including its open subpoena process and witness interviews, has resulted in substantial publicity centered around a federal investigation. As you are aware, the United States Attorneys' Manual specifically provides as follows:

1-7.530 Disclosure of Information Concerning Ongoing Investigations

- A. Except as provided in subparagraph B. of this section, components and personnel of the Department of Justice shall not respond to questions about the existence of an ongoing investigation or comment on its nature or progress, including such things as the issuance or serving of a subpoena, prior to the public filing of the document.
- B. In matters that have already received substantial publicity, or about which the community needs to be reassured that the appropriate law enforcement agency is investigating the incident, or where release of information is necessary to protect the public interest, safety, or welfare, comments about or confirmation of an ongoing investigation may need to be made. In these unusual circumstances, the involved investigative agency will consult and obtain approval from the United States Attorney or Department Division handling the matter prior to disseminating any information to the media.

Based upon the foregoing, I am concerned how the Department of Justice has handled this matter as well as the appearance that certain decisions are being politically driven. I am therefore requesting that these matters be reviewed and if there does exist an issue, that it be addressed in a timely fashion. If you

have any questions or concerns whatsoever, please do not hesitate to contact me. As always, I look forward to working with you on these matters.

Sincerely,



Marty J. Jackley
ATTORNEY GENERAL

MJJ/lde
Enc.

cc w/enc: Janice M. Rodgers, Director
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