



U. S. Department of Justice

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November 22, 2010

VIA HAND DELIVERY

Joseph B. Cheshire V  
Attorney at Law  
133 Fayetteville Street  
Raleigh, North Carolina 27602

Re: Michael F. Easley

Dear Counsel:

Since about February 26, 2009, our office, together with the Federal Bureau of Investigation and the Internal Revenue Service-Criminal Investigation, has been conducting an investigation into possible violations of federal criminal law by Michael F. Easley and others working in the Governor's Office while Mr. Easley was Governor of North Carolina from 2001-2009. At our request, the N.C. State Bureau of Investigation has also assisted in this federal investigation. One federal indictment and conviction has resulted from this investigation.

In October, 2009, when we learned, via the news media, that the North Carolina Board of Elections had made a criminal referral and that a special state prosecutor had been appointed, we contacted him in order to avoid interference with each other's investigations. This was consistent with the guidance for federal prosecutors contained in United States Attorneys Manual (USAM) § 9-031(A).

In the last several weeks, we have, at your request, entered into discussions about whether a settlement could be reached that would conclude both the federal and state investigations of Mr. Easley.

On November 19, 2010, we were informed by the state prosecutor that your client had agreed to plead guilty to one count of causing the filing of a false campaign finance report (a Class I Felony), in violation of N.C. Gen. Stat. §§ 163-278.9(5a), 163-278.9(g),

163-278.11(a)(1), 163-278.11(b), 163-278.27(a1), and 163.278.32. See Attachment A. Apparently, Mr. Easley's agreement to so plead is contingent on the agreement of our office to decline prosecution of Mr. Easley in connection with the federal investigation, which our office had previously offered to do when we understood that the state prosecutor was proposing a different felony charge than the one under discussion now.

Whenever a state prosecution proceeds to conviction or acquittal and that person is under investigation by federal authorities, federal prosecutors must consider the "Dual and Successive Prosecution Policy" (sometimes called the "Petite Policy") set forth in USAM § 9-031. Though prosecution for the same conduct in both state and federal court is allowable under the U.S. Constitution because of the doctrine of dual sovereignty, and though the Petite policy is not enforceable in court against federal prosecutors, we are nevertheless obliged to follow it as a matter of internal U.S. Department of Justice policy. The policy is implicated when there has been a state prosecution "based on substantially the same act(s) or transaction(s)" as a proposed federal prosecution. USAM § 9-2.031(A). As quoted below, the policy precludes a successive federal prosecution unless three conditions are met:

This policy precludes the initiation or continuation of a federal prosecution, following a prior state or federal prosecution based on substantially the same act(s) or transaction(s) unless three substantive prerequisites are satisfied: First, the matter must involve a substantial federal interest; second, the prior prosecution must have left that interest demonstrably unvindicated; and third, applying the same test that is applicable to all federal prosecutions, the government must believe that the defendant's conduct constitutes a federal offense, and that the admissible evidence probably will be sufficient to obtain and sustain a conviction by an unbiased trier of fact.

Id. (emphasis added).

Applying this policy to the Easley matter, it cannot be said that the proposed state guilty plea precludes a successive federal prosecution because the charge to which Mr. Easley proposes to plead guilty is not based on "substantially the same act(s) or transaction(s)" on which the federal investigation has been

focused. The focal points of our investigation were outlined to you in our meeting on November 10, 2010.

However, merely because the Petite policy does not preclude a possible federal prosecution on a particular set of facts does not mean that federal charges must be brought. "The traditional elements of federal prosecutorial discretion continue to apply." Id., citing *The Principles of Federal Prosecution*, USAM § 9-27.110.

Some of the acts and transactions we have investigated do not warrant federal prosecution because the standard for presenting an indictment (highlighted in the quote above) has not been met. To the extent that there are any others that might meet that standard, it is also appropriate for federal prosecutors to consider, among other things, the burdens on accused persons associated with multiple prosecutions and the effective utilization of federal prosecutorial resources, as well as to promote coordination and cooperation between federal and state prosecutors. See USAM § 9-2.031.

Applying these principles, the United States Attorney for the Eastern District of North Carolina has decided that if Mr. Easley enters a final guilty plea to the North Carolina felony described above, the ongoing federal investigation of Mr. Easley's conduct will be closed, and this office will decline to bring any charges against Mr. Easley based on the currently known facts. Specifically, no federal charges against Mr. Easley will be brought in connection with the focal points discussed in the presentation made to you on November 10, 2010.

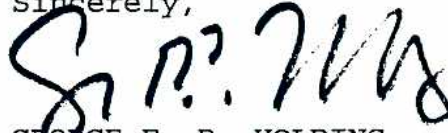
This agreement can only bind the United States Attorney for the Eastern District of North Carolina, but we represent to you that we are unaware of any federal investigation of Mr. Easley's conduct as Governor by federal prosecutors outside this district.


If Mr. Easley were to seek to withdraw his guilty plea in state court or otherwise challenge his conviction there, this agreement would become null and void.


Because the purpose of this agreement is to seek finality and repose for Mr. Easley and this office, by accepting its terms, Mr. Easley is agreeing that he does not need any further information about the federal investigation and therefore will not demand any disclosures from the United States under Fed. R. Crim. P. 6, 16 and 26.2, 18 U.S.C. § 3500, or FOIA/Privacy Act, and will not seek any civil remedies against the United States based on this federal investigation.

Please signify your agreement and that of your client to the foregoing terms by signing a copy of this letter and returning to the undersigned.

Sincerely,

  
GEORGE E. B. HOLDING  
United States Attorney

  
JOHN STUART BRUCE  
First Assistant U.S. Attorney

  
DENNIS M. DUFFY  
Assistant U.S. Attorney

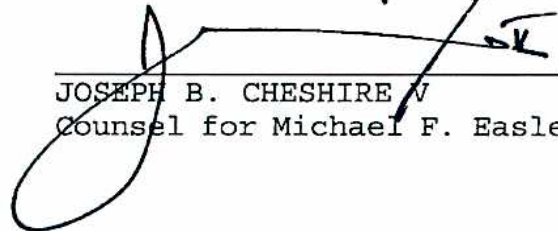
JSB/snh

I hereby accept the terms of this agreement as outlined above.

DATE: 11.22.10

  
MICHAEL F. EASLEY

DATE: 11.22.10

  
JOSEPH B. CHESHIRE  
Counsel for Michael F. Easley