

For Immediate Release – January 5, 2017

Whistleblower Beats Attempt to Dismiss Precedent-Setting Federal Lawsuit Attacking Racially Biased Policing

Boston, Massachusetts – *A Boston federal judge has denied a police department's bid to toss a False Claims Act case filed by former Brockton, Massachusetts, homicide detective Ken Williams, who alleges a long-standing pattern and practice of discrimination and civil rights violations by his former employer, the Brockton Police Department.*

The federal lawsuit, [*United States ex rel. Ken E. Williams v. City of Brockton, et al*](#), was filed in Boston federal court in 2012 under the federal [False Claims Act \(FCA\)](#). The FCA allows private citizens like [Ken Williams](#) to bring legal actions when recipients of federal tax dollars fail to follow material requirements for receiving federal funding. Williams, a former homicide detective and 15-year veteran with the Brockton Police, did just that by claiming that the department, as recipients of federal funding, failed to comply with material obligations to conduct its policing in compliance with Title VI and Department of Justice directives.

The U.S. Justice Department recently weighed in on the side of Williams, filing its own [legal brief](#) supporting the lawsuit's core claims, urging the court not to dismiss Williams' lawsuit. On December 23, 2016, [the court sided](#) with Williams and the Justice Department, allowing the case to proceed to the next phase of the litigation.

“Long-standing discriminatory policing undermines community trust, creates racial divide, escalates tensions and potentially leads to incidents of excessive force with tragic consequences such as those which occurred in communities like Ferguson, Cleveland and Chicago,” said Thomas Poulin, the attorney with the Simmer Law Group, which is representing Williams. “Our client's whistleblower lawsuit could be a model to address racially biased policing early on, before tragedy strikes.”

Like police departments across the country, the city of Brockton has received federal grants under the [Community Oriented Policing Services \(COPS\) program](#), which was established by Congress in 1994. The largest crime bill in U.S. history, the [1994 Violent Crime Control & Law Enforcement Act](#) expanded criminal penalties and provided federal funding for 100,000 new police officers as well as for the construction of additional prisons. But after having watched the eruption of violence in Los Angeles following the acquittal of police officers accused of beating motorist Rodney King, Congress also imposed strict requirements that all federal grant recipients comply with civil rights laws.

The COPS program was designed to improve community policing by providing funds to hire and train new officers, deploy new crime-fighting technologies and develop



innovative strategies to integrate police officers into the community at large. Since 1995, the federal government has spent over \$15 billion on the program. From 1995 to 2011, Brockton PD funded the salaries of 41 officers, including Williams, using \$5.8 million of COPS grants.

Because COPS is a federally funded and managed program, Congress mandated that recipients must comply with anti-discrimination provisions of the **Omnibus Crime Control and Safe Streets Act of 1968**, and **Title VI of the Civil Rights Act of 1964** forbidding discrimination on the basis of race, color, sex or national origin. Both municipal and police executives in communities receiving COPS grants must promise or “certify” to the government that the funds will be used as Congress stipulated. Breaking the promise to use the grants as intended can result in the loss of future COPS funding and sanctions.

“Our contention is that, under the FCA, police departments that have a pattern and practice of civil rights abuses, but misrepresent to the government that they do not, are potentially liable for re-payment of COPS grants, can be barred from receiving more federal tax dollars, assessed civil penalties and be required to enter into consent agreements with DOJ to ensure future civil rights compliance,” said Poulin.

To file a federal FCA case, also called a ‘qui tam’ action, Poulin says the whistleblower must have non-public, material information about fraud being committed with funds from a federal government program. With respect to COPS grants, this could be police officers, who witness a pattern of discrimination by fellow officers but get no recourse through internal reporting; or, alternatively, municipal employees who have knowledge of confidential settlements that keep civil rights abuses under wraps.

“The False Claims Act has proven highly effective in using the leverage of federal funding to police illegal behavior in other areas such as drug and device marketing, government contracting, or health care kickbacks to obtain government contracts. We believe that it can be equally effective in policing the police,” Poulin said.

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About Simmer Law Group PLLC

Based in Washington, D.C., the Simmer Law Group PLLC represents whistleblowers nationwide pursuing claims under various whistleblower statutes, including federal, state and local False Claims Acts, state insurance fraud laws, as well as the SEC and IRS whistleblower programs. These claims involve a wide array of industries including pharmaceuticals, health care, government contracting, government grants and banking. The firm also represents health plans and managed care organizations nationwide, both individually and in class actions, involving large-scale affirmative recovery matters in the areas of antitrust, fraud and deceptive business practices.

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