



July 14, 2022

Ms. Kristen Clarke
Assistant Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530-0001

Sent via email

Re: Request for Investigation into Wrongful Arrest and Mistreatment of Child by Lee County, Florida Sheriff's Office

Dear Ms. Clarke:

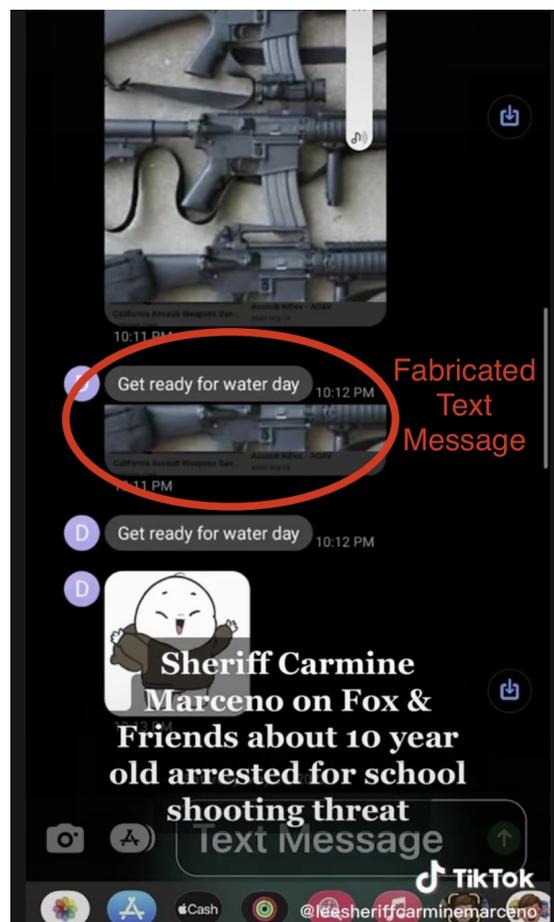
I am an attorney at the [Foundation Against Intolerance & Racism](#) (FAIR), a nonpartisan, nonprofit organization dedicated to advancing civil rights and liberties, and promoting a common culture based on fairness, understanding, and humanity.

We write to request that the Department of Justice open an investigation regarding Constitutional and civil rights violations committed by the Lee County, Florida Sheriff's Office against an innocent child. On May 28, 2022, under the direction of Sheriff Carmine Marceno, two Lee County deputies arrested ten-year-old Daniel Marquez for allegedly threatening to commit a mass shooting, a second-degree felony under Florida law.¹ According to the arrest report (attached), Daniel sent a private text to a friend the prior evening, making the facially unserious claim that he had "scammed" \$1,000,000,000,000 (a *trillion* dollars) to buy "this," which was a screenshot of a Google image of firearms. As the arrest report shows, the officers at the scene knew the image was from Google and not of firearms in Daniel's possession. The report also states that Daniel subsequently sent a separate text to that same friend saying, "Get ready for water day," accompanied by a funny emoji. "Water day" is an event at Daniel's school for well-behaved honor roll students such as Daniel. As shown by the happy emoji, Daniel was expressing his excitement for that fun event; he never made any threat to shoot anyone or anything. Nevertheless, he was arrested on May 28 for allegedly threatening to commit a mass shooting, held in a detention facility for almost two weeks (where he contracted influenza), and subsequently placed under house arrest. On July 11, Daniel was arraigned and will have to stand trial based on nothing more than acting like a ten-year-old child.

¹ The statute in question is Florida Statute section 836.10, which states, in relevant part: "It is unlawful for any person to send, post, or transmit, or procure the sending, posting, or transmission of, a writing or other record, including an electronic record, in any manner in which it may be viewed by another person, when in such writing or record the person makes a threat to: (a) [k]ill or to do bodily harm to another person; or (b) [c]onduct a mass shooting or an act of terrorism."

Within a few hours after Daniel's arrest, Sheriff Marceno posted on his official Facebook account (which has 212,000 followers) a [video](#) of Daniel being perp walked while handcuffed, and released his unblurred booking photo. The video and photo have both gone viral. Additionally, Sheriff Marceno published on his official TikTok account (which has more than 350,000 followers) a grossly misleading [video](#) his office created about Daniel, set to AC/DC's "Shoot to Thrill." That video purports to show Daniel's texts, but in fact, the images are misleading fabrications created by the Lee County Sheriff's Office. They make it appear, falsely, that Daniel's "water day" text was a caption for a rifle image and that Daniel sent the water day text twice.

Screenshot from a video posted on the official TikTok account for the Lee County Sheriff's Office on June 10, with the fabrication highlighted:



That text is a complete fabrication and manipulation of evidence. Daniel never texted "Get ready for water day" with a gun image beneath it. As the arrest report shows, Daniel texted about water day only once in a separate, stand-alone message to his friend, and not as part of a text with images of firearms. The Sheriff's decision to manufacture a "Get ready for water day" text with a gun image as part of the same message, and publish it on TikTok, was a cynical attempt to frame a ten-year-old child in the eyes of the public as having made a threat, when that is not true.

Sheriff Marceno also gave news interviews wherein he again falsely represented what Daniel texted. For example, Sheriff Marceno [stated](#), “[Daniel] described wads of cash and ‘get ready’ to commit a mass shooting.” In fact, as Sheriff Marceno knows, Daniel texted to get ready for *water day* (not to get ready for a “mass shooting”) and instead of “describ[ing] wads of cash,” Daniel texted that he had obtained a trillion dollars—an imaginary and childish claim every reasonable adult knows is impossible and not real.

Through those actions and others, Sheriff Marceno and his deputies violated ten-year-old Daniel’s Constitutional and civil rights, warranting a thorough investigation by the Department of Justice. Federal law makes it a crime for anyone acting under color of law to willfully deprive a person of any right or privilege protected by the Constitution or law.² Similarly, it is a crime for two or more persons to agree to injure, oppress, threaten, or intimidate a person in the free exercise or enjoyment of any Constitutional or federal right.³ Sheriff Marceno and his deputies have violated several of Daniel’s Constitutional and legal rights. They wrongfully arrested him for threatening to commit a mass shooting when he made no threat at all, in violation of his Fourth Amendment rights. They arrested him for engaging in protected speech, in violation of his First Amendment rights. And they trampled over Daniel’s due process rights by disseminating fabrications of what he texted and a video of his perp walk: in Florida, law enforcement information pertaining to a child is confidential and there is no exception for videos, particularly one as prejudicial and harmful as the video in this case.⁴

Sheriff Marceno has a pattern and history of contempt for the rights of those under his power. Repeatedly referring to jail and prison as “the Marceno Motel,” he publicly (and in his official capacity) calls suspects a “[piece of sh*t](#),” “[pile of sh*t](#),” “[oxygen-stealer](#),” “[frosty little female](#),” and [flea-ridden “scumbag” who “smells like piss](#)”; claims [suspects who deny culpability cannot be believed](#); threatens to [duct-tape them, shoot them dead](#), and put them “[six feet under](#)”; says his office is “[havin’ fun lockin’ up these thuuugs](#)”; and publishes on his official account [video](#) after [video](#) of himself and his team in military-style tactical gear.

² “Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both....” 18 U.S.C. § 242.

³ “If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or [i]f two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—[t]hey shall be fined under this title or imprisoned not more than ten years, or both....” 18 U.S.C. § 241.

⁴ See Florida Stat. § 985.04. That section permits some information to be disclosed (such as arrest reports), but not videos of the child created by law enforcement.

We urge the Department of Justice to open an investigation into the wrongful arrest and gross mistreatment of Daniel Marquez by the Lee County Sheriff's Office. Unless action is taken, Sheriff Marceno will feel free to continue to abuse his position and power at the expense of innocent children.

Please contact me if you have any questions or would like to discuss this matter further. We thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read 'L. Kim', written in a cursive style.

Letitia Kim
Managing Director of the Legal Network
Foundation Against Intolerance & Racism

Attachment

cc: Ms. Shaylyn Cochran, Chief of Staff and Senior Counsel, United States Department of Justice