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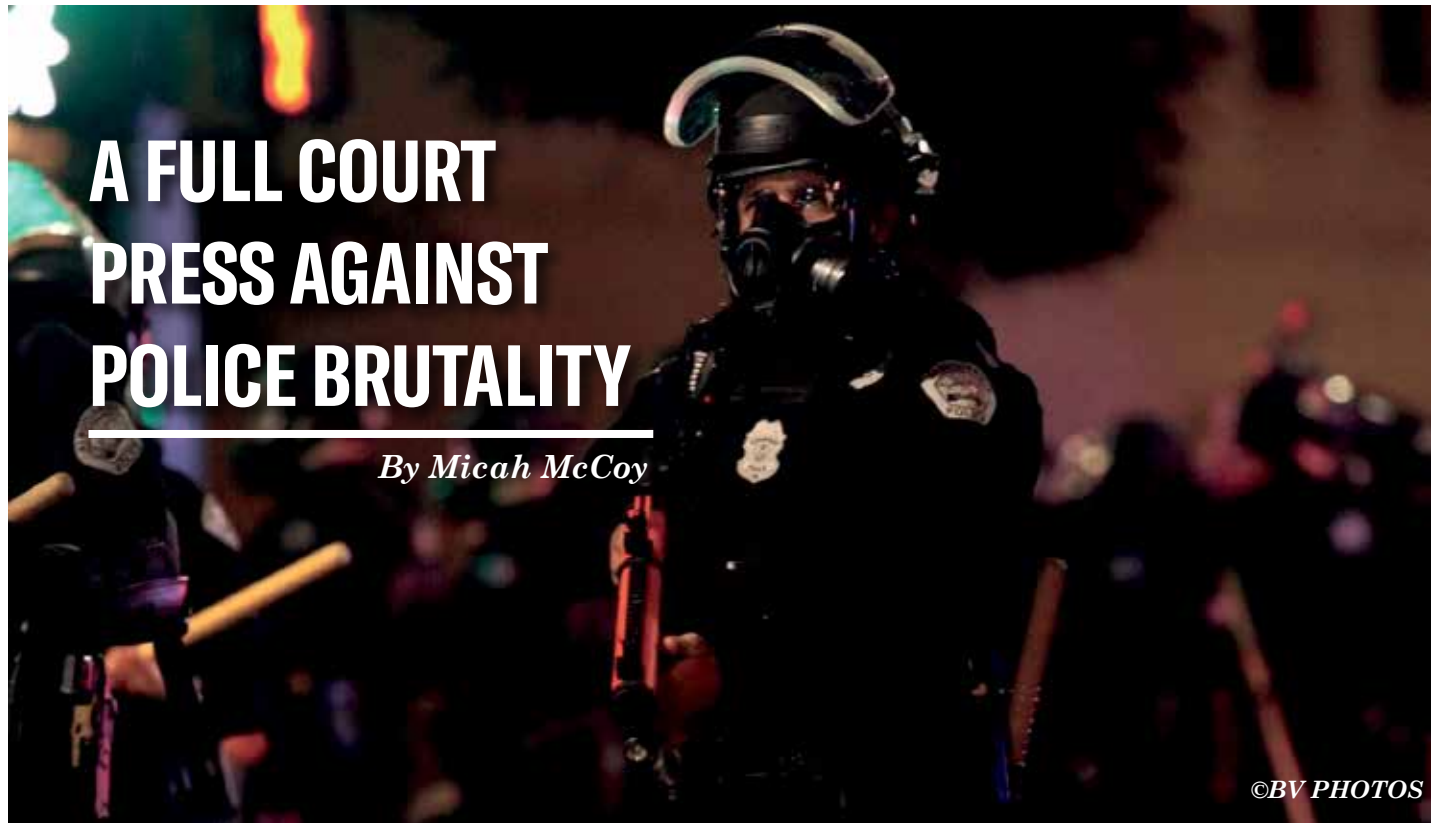
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# THE TORCH

The Newsletter of the American Civil Liberties Union of New Mexico

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Police brutality is not new, nor is systemic racism in policing. Police forces in the United States were used to catch runaway slaves and later to enact a campaign of terror against Black people during the Reconstruction and Jim Crow eras. Police were employed to brutally suppress striking factory and farm workers in the 20th century. Police were used to violently disperse protesters during the Civil Rights and Anti-War movements. Police are the front line soldiers in the ongoing “War on Drugs” that has led to the over policing of communities of color, mass incarceration, and the highest rate of officer-involved shootings in the developed world.

What has changed is the technology that makes police brutality and systemic racism much more visible, especially to those of us for whom police brutality and racist policing is not a lived reality and daily existential threat. The images of state troopers viciously beating civil rights protesters in 1963 shocked the country so deeply that congress passed the Civil Rights Act the following year. The beating of Rodney King in 1991 by four police officers, captured by an early handheld video camera, led to a citywide uprising in Los Angeles and nationwide conversation about police brutality and racism. Cellphone footage of a NYPD police officer choking

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NON PROFIT ORGANIZATION U.S. POSTAGE PAID ALBUQUERQUE, NM PERMIT NO. 59

## FIGHTING FOR THE FORGOTTEN

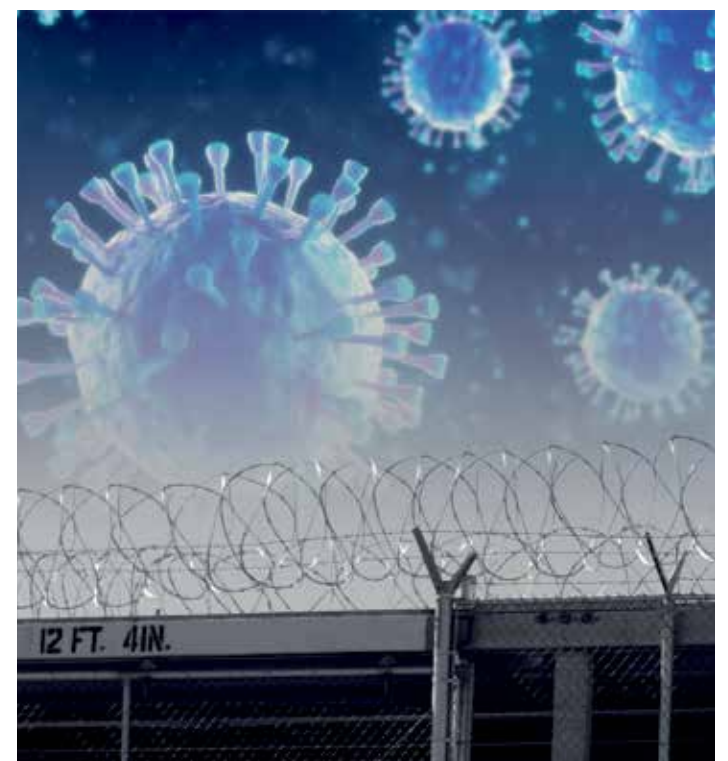
*Working to protect people behind walls in a time of pandemic*

*By Katie Hoepfner*

In the back of an ambulance, during the nearly forty-minute ride from Springer Correctional Center (SCC) to Raton Medical Center, Kandyce Jaramillo stopped breathing multiple times. She was in the midst of an asthma attack so severe that she nearly had to be intubated upon arrival at the hospital. Luckily, the 35-year-old mother of six regained her breathing after a doctor injected her with medication. She was released the next day.

That was on February 10, before New Mexico had a single known case of coronavirus.

Before the respiratory disease reached global pandemic status, Kandyce, who is incarcerated for simple drug possession, frequently worried about her health. Now that New Mexico has over 23,000 known cases of the virus, and jails, prisons, and immigration detention centers have become hotspots for the infection, Kandyce lives in a constant state of fear. Already highly vulnerable to serious illness or death if infected, living behind bars, where healthcare is notoriously substandard and people live in close quarters, puts her at even greater risk.



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## FULL COURT PRESS AGAINST BRUTALITY

*Continued from page 1*

Eric Garner, a Black man accused of selling loose cigarettes, to death in 2014 helped spark the Black Lives Matter movement.

Today, practically every person in the country carries a high definition video camera in their pocket and has the ability to share footage with the entire world in seconds. Police brutality, especially against communities of color, has become impossible to ignore. On May 25th, when white Minneapolis police officer Derek Chauvin was filmed slowly murdering George Floyd, an unarmed Black man accused of passing a fake twenty dollar bill, by kneeling on his neck for over eight minutes as he begged for air, it outraged the entire nation and spurred millions to take to the streets in protest.

We stand at an inflection point, a moment where the wider public is waking up to the injustice, violence, and racism that remain embedded in our systems of policing. The people demand change.

The ACLU of New Mexico has fought against police brutality and racial discrimination since its founding nearly 60 years ago and we're throwing our full weight behind the movement at this pivotal moment. Our affiliate is conducting a full court press, fighting in the courts, in the legislature, and in the streets for the change New Mexico so badly needs.



**PHOTO: ACLU-NM client D'Andre Ravenel standing at the intersection where he was arrested.**

### In the Courts

Though we pride ourselves on our diversity, New Mexico is far from immune to the violent and discriminatory police practices that have sparked protests both nationwide and here in our state. In July, the ACLU of New Mexico filed a lawsuit on behalf of D'Andre Ravenel, a 23-year-old Black man who was arrested by a New Mexico State Police officer for filming a joint FBI-police raid from a street corner nearby to his home.

After New Mexico State Police and the FBI descended on a house a few doors down from his own, D'Andre began recording the raid from a safe distance. Noticing him recording, one of the officers approached D'Andre and demanded to see his identification. D'Andre, who was engaging in constitutionally protected activity, told the officer that he did not have his ID on him. The officer criminally charged D'Andre with "interfering with an investigation" and arrested him. While he was in handcuffs, an FBI agent who was participating in the raid illegally seized his cellphone and refused D'Andre when he asked to speak with his attorney. D'Andre spent four days in jail for doing nothing more than filming the police while Black.

"I am always fearful when interacting with law enforcement because I know that the color of my skin

makes me a target," said Ravenel. "I asserted my rights anyway because it's more important than ever in this moment to hold officers who abuse their power accountable."

Ravenel's lawsuit is only one of several involving racial discrimination or excessive force this past year. Last fall, the ACLU of New Mexico filed a lawsuit against the Bernalillo County Sheriff's Office (BCSO) on behalf of the family of Elisha Lucero, a Hispanic woman suffering from mental health issues following brain surgery, who was shot 21 times by deputies. This spring, BCSO settled the lawsuit for a record four million dollars.

The ACLU of New Mexico settled a second suit against BCSO in February that alleged three separate incidents of racial profiling against an African-American motorist who was working in the area on assignment as a federal agent, and this spring, the ACLU of New Mexico filed a lawsuit on behalf of a man from Acoma Pueblo, who was wrongfully detained and brutalized by a New Mexico State Police officer after he called 911 when he observed a single-car accident near the pueblo.

### In the Legislature

Last year during the 60-day legislative session, the ACLU of New Mexico was instrumental in the passage of a raft of groundbreaking legislation reforming New Mexico's criminal legal system. That package of legislation included reform of solitary confinement in New Mexico's jails and prisons, criminal record expungement, a bill to reduce employment discrimination against the formerly incarcerated, decriminalization of marijuana possession, and other reforms.

"Following the 2019 session, we believed that it would be another two years before we had a real chance to pass new reforms through the legislature," said ACLU of New Mexico Director of Public Policy Steven Robert Allen. "But swiftly evolving attitudes concerning police brutality following the death of George Floyd gave a new urgency to reform efforts. People were outraged, marching in the streets, and demanding change."

When the legislature met in June for a special session to shore up the state budget in

the wake of the COVID-19 economic crash, the ACLU of New Mexico coordinated with community partners and advocates to channel public outrage into passing Senate Bill 8, a law that would require New Mexico law enforcement agencies to equip their officers with body-worn cameras. The bill moved quickly through both houses, and was signed into law by Governor Michelle Lujan Grisham in July.

"It was a real testament to the adaptability and innovation of our digital and organizing teams," said Allen. "Organizing and mobilizing people in the middle of a global pandemic in a special session meant we had to sort of jump and build the airplane on the way down."

The new law will have an immediate impact on the transparency and accountability of law enforcement in our state. Sheriff Manny Gonzales, head of BCSO, the largest Sheriff's department in the state, has steadfastly refused to equip his deputies with body-worn cameras for years. This legislation will finally force him and other holdouts across the state to join the majority of law enforcement agencies nationwide who use this important technology.

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# FROM THE DESK OF EXECUTIVE DIRECTOR PETER SIMONSON

During the recent special legislative session, the ACLU and its allies achieved something that six months ago seemed like an absolute long-shot: passing a law that requires every law enforcement agency in the state to adopt body-worn cameras. While the law does give us a new tool to strengthen police accountability in the state, it is by no means a cure-all for police excessive use of force. If we're ever going to put an end to police violence, we will need to use every tool at our disposal to reform police culture and reduce the potential harm of police-citizen interactions.

Try googling "effectiveness of lapel cams" and you will come up with a host of reports, studies and op-eds debating the merits of that technology. An early study carried out by the Rialto Police Department in California, for example, found that the adoption of body-worn cameras dramatically reduced use of force incidents. Subsequent studies, however, produced more mixed results, and you will even find some police reform advocates dismissing body-worn cameras as ineffective at stopping police misconduct.

The problem with these conclusions is that they fail to take into account the broader context within which police use of force occurs. Body-worn cameras are only as effective as the systems of accountability that surround them. If departments do not have rigorous policies, investigative processes, and internal supervision to identify officers who fail to properly use body-worn cameras, and hold them accountable for those policy violations, then they will see what for too long took place within the Albuquerque Police Department before the intervention of the U.S. Department of Justice. Officers will "forget" to turn cameras on, videos won't be uploaded, and recordings won't be reviewed. The technology will fail.

This lesson holds true for most other factors in the use of force equation as well. A police department can adopt the most progressive use of force policies and train their entire force on de-escalation techniques, but none of it will reduce excessive use of force if officers aren't disciplined for ignoring those requirements. And the sad truth is that the "blue wall of silence" too often undermines true accountability within police departments, even when a reform-minded chief takes over.

Which is why the ACLU has insisted that one of the most important means of reducing police violence is simply to reduce interactions between armed officers and the public. Studies show that police officers nation-



ally devote only about 4 percent of their time responding to calls for serious violent crime. For many departments, traffic-related incidents, property crimes, and noncriminal issues, such as welfare checks, make up the bulk of calls for service. Most of these calls do not require an armed response and, indeed, would benefit from a different kind of first responder, such as a trained mental health professional or social worker.

And yet, too frequently, armed officers are the first and only people on the scene and they escalate what should be a minor intervention into a lethal officer-involved incident. As a steady stream of cellphone videos and body-worn cam recordings has shown us over the years, racism often plays a decisive role in setting off that tragic response.

There is no single path to meaningful police reform in our country. If we truly are committed to preventing the tragic death of another Breonna Taylor or George Floyd from occurring, police departments must be willing to combine defunding strategies with better use of force training and policies, better systems of accountability, body-worn cameras, and many other mechanisms to contain excessive use of force. Anything less and we will continue to see the boom and bust cycle of shocking, infuriating videos, followed by reactive street protests, followed by periods of complacency until the next outrageous video surfaces. And the police will continue to be an institution that terrorizes communities of color instead of protects their safety.

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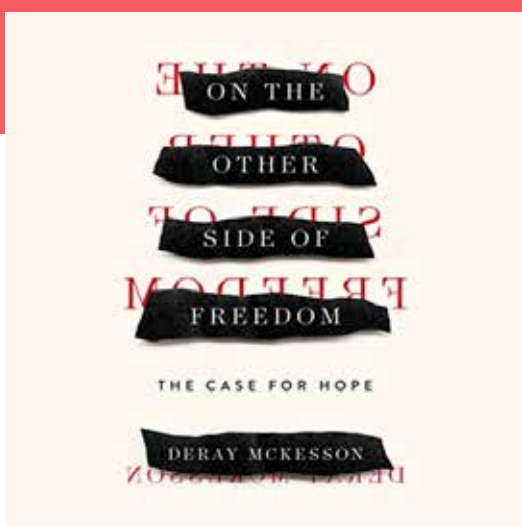
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## On the Other Side of Freedom: The Case for Hope by DeRay McKesson

From the internationally recognized civil rights activist/organizer DeRay McKesson who stood with hundreds of others on the streets of Ferguson, Missouri, to push a message of justice and accountability, *On the Other Side of Freedom* is an introspective call to take responsibility for imagining, and then building, the world we want to live in.

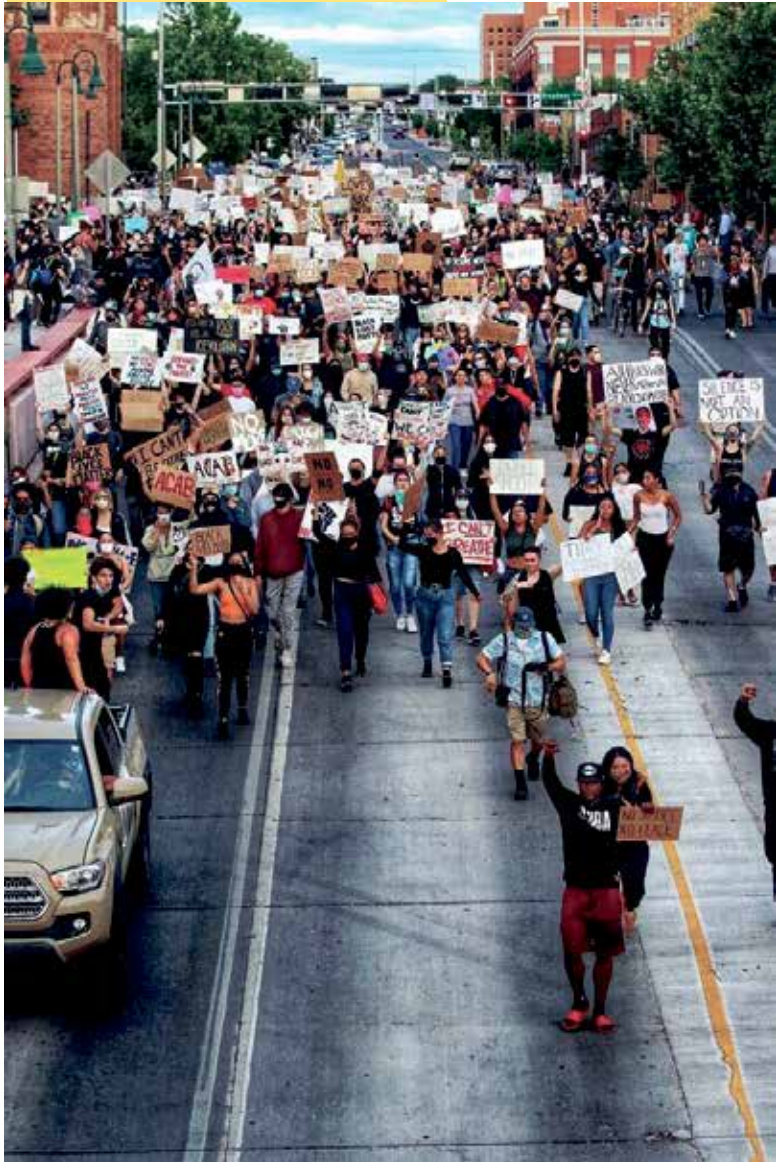
***"I've chosen to share this book with our ACLU community because DeRay McKesson helps us to see that even in complicated times, we can still take actions to create meaningful social change."***

- Christine Vigil, ACLU of New Mexico Development Specialist



## FULL COURT PRESS AGAINST BRUTALITY

*Continued from page 2*



**PHOTO: Black Lives Matter protesters on Central Ave. in Albuquerque.**

©BV PHOTOS

### HEAR MORE FROM D'ANDRE

Use your mobile device's QR code reader to watch a video of D'Andre talking about his arrest.

[www.youtube.com/aclunm](http://www.youtube.com/aclunm).



### In the Streets

Much of the driving energy of the movement to reform police practices in America has come from the hundreds of demonstrations in cities and towns across the United States, and even in other countries across the world. People of all ages, races, ethnicities, and backgrounds have taken to the streets to support Black lives in a series of ongoing protests that constitute the largest protest movement in U.S. history. The backlash from local police departments and federal police agencies under the control of the Trump administration has been swift and brutal.

Videos from Black Lives Matter protests across the country show officers in riot gear tear gassing predominantly peaceful protesters, clubbing unarmed protesters, shooting people with rubber bullets, and conducting mass arrests. President Trump even ordered the violent dispersal of a peaceful protest in Washington D.C. so he could stage a

photo op with a Bible outside the White House. In Portland, where protests have been continuous for the past two months, a mashup of paramilitary units from the Department of Homeland Security were deployed to downtown Portland in full battle dress where they escalated tensions by attacking peaceful protesters and abducting people off the streets into unmarked vans.

"It's a very precarious moment for the First Amendment," said ACLU of New Mexico Legal Director Leon Howard. "We're at a place where the American people feel they have no choice but to rise up in protest, and we have an administration that wants to suppress their voices, violently if need be."

To help protesters better navigate confrontations with law enforcement, the ACLU of New Mexico commu-

nications department collaborated with the legal team to produce a 'know your rights' video explaining how to safely exercise your rights at a protest. The video, which has now been viewed nearly 12,000 times, helps protesters understand how to safely record police interactions at protests, how to protect private data, how to respond if stopped by an officer at a protest, and what to do if you believe your rights have been violated.

### Above the Streets

This July, we marked the one-year anniversary of Elisha Lucero's death at the hands of BCSO deputies by collaborating with Lucero's family to launch a seven-week long billboard campaign in Albuquerque. Together, we honored her memory and promoted reforms that will help prevent other families from losing loved ones to police violence.

"We wanted to send a message that this is not how things have to be," said Elaine Maestas, Elisha Lucero's sister. "Our community should never have to fear that calling emergency services will result in the death of a loved one. Not every problem requires an armed response. We must dramatically reimagine the role of law enforcement in our lives because the current system is killing our families."

### In the Future

Although we are experiencing a seismic shift in the attitudes and awareness surrounding police brutality and systemic racism, bringing about the needed changes has been and will continue to be a long term project. In addition to our ongoing fight for justice in the courts, we plan to advocate for two major pieces of legislation during the 2021 session that would make sweeping reforms to our state's criminal legal system. We plan to support a statewide use of force bill that would rein in deadly use of force by officers, prevent abusive officers from being rehired, and implement a range of other reforms aimed at decoupling violence from police work.

We also intend to promote a Civil Rights Act for the state of New Mexico that would end qualified immunity for law enforcement officers, which provides near universal protection against liability for police officers, even those who break the law intentionally. This will go a long way towards putting an end to the culture of impunity that infects many law enforcement departments and ensure that officers who abuse civilians and violate rights will finally face consequences for wrongdoing.

The ACLU of New Mexico will continue to fight on every front for a future where people no longer fear that a routine encounter with law enforcement will be fatal or that they will be treated unjustly because of the color of their skin. We have our work cut out for us, but we know nothing is impossible when we the People rise up and stand together for the change we believe in.





## FIGHTING FOR THE FORGOTTEN

*Continued from page 1*

“I just put in another three sick calls and they still haven’t seen me yet,” said Kandyce. “It’s getting harder and harder to breathe.”

Despite her constant struggle for air, SCC has denied her multiple recent requests for nebulizer treatment and a rescue inhaler.

“I’ve been crying a lot lately because there’s nothing that I know I can do for any of this and I just have to continue on asking them for help even though I’m obviously not their priority,” Kandyce said. “The only time they would see me is if I would drop on the floor or stop breathing again. But I don’t want to stop breathing again.”

Though SCC does not yet have any known cases of coronavirus, Kandyce fears that if the virus enters the facility, it won’t be long before it spreads rapidly. One need only look at Otero County Prison Facility, where 80 percent of people tested positive in late June, or Otero County Processing Center, a privately-run ICE detention center with over 150 cases at last count, to see how infectious spread is likely to play out.

“Kandyce is serving a sentence for drug possession, a conviction that reflects her longtime struggle with addiction,” said Lalita Moskowitz, ACLU of New Mexico staff attorney and lead counsel on the affiliate’s efforts to protect incarcerated people from coronavirus. “She poses no danger to her community. But her current environment poses a life-threatening danger to her.”

Michel Luis Fuente knows all too well the fear Kandyce feels. After the 33-year-old fled Cuba and sought asylum in the United States in June of 2019, he was immediately detained in Otero County Processing Center (OCPC), where he languished for a year. He too suffers from severe asthma and is highly vulnerable to coronavirus.

“It is one thing to say that this country respects human rights, but inside (the detention center) they don’t,” said Michel. “You could be dying in there and all they tell you is ‘you should have stayed in your country.’”

At OCPC, Michel lived in a dormitory with 49 other people who shared four sinks, four toilets, and four showers amongst them. They slept in bunk beds roughly three feet apart from each other. Not only was social distancing impossible, but cleaning and hygiene products were in short supply. Many guards did not even wear masks or gloves. Without any way to properly protect against the virus, and knowing that his asthma made him vulnerable to infection, Michel says he fell into despair, crying every day out of fear of dying.

### The perfect storm

When coronavirus first hit the United States, public health experts warned that jails, prisons, and ICE detention centers were tinderboxes for infection that would inevitably flare up and spread out into surrounding communities. People are packed together in tight quarters and cannot keep the recommended six feet of distance from one another. Many people are already in compromised health, making them more vulnerable to infection, and medical resources are limited. Sanitation in these facilities is poor and hygiene products remain in chronic short supply.

The conditions are so ripe for infection that back in March, an epidemiology professor at Yale School of Public Health, Greg Gonsalves, told the *New Yorker*, “If you wanted to set up a situation that would promote rapid transmission of a respiratory virus, you would say prison: it’s close quarters, unsanitary, individuals in frequent contact.”

The ACLU national office and ACLU affiliates across the country, having long advocated for people behind walls, knew public health experts were right to be concerned. Not only are these facilities hotbeds for the spread of disease, but policymakers are often quick

to look the other way when poor people and people of color—who are disproportionately locked up—are in danger.

Here in New Mexico, and throughout the country, the ACLU took swift action, writing letters to governors, correctional departments, congressional delegations, and individuals prisons, jails, and ICE detention centers, urging them to immediately develop plans to mitigate the risk of coronavirus for incarcerated people and surrounding communities. We advised them to immediately reduce the population in detention facilities by releasing the most vulnerable; to provide soap, hand sanitizer, and cleaning supplies; and to ensure scientifically-based protocols for testing and treatment were in place.

Our pleas were largely met with silence and indifference. But we didn’t give up. When elected officials and wardens didn’t take our warnings seriously, we dug in our heels and redoubled our efforts.



**PHOTO: Immigration detention holding area in McCallen, TX in 2019. Overcrowding and unsafe conditions continue during the COVID-19 crisis.**

### Marshalling all of our resources

Our legal team sought every remedy to release as many people as possible from New Mexico’s jails, prisons, and detention centers, including filing habeas petitions on behalf of medically vulnerable people. Through these petitions, we have been able to help individuals challenge the conditions of their confinement as unconstitutional and fight for release.

Our first habeas petition, filed in early April, demanded the release of Yesenia Evans, who was detained in Santa Fe County Jail on a non-serious probation violation. Yesenia suffers from a rare autoimmune disease known as Systemic Sclerosis that impacts the function of her digestive system, heart, lungs, and kidneys. The petition argued that confining Yesenia, whose medical condition renders her particularly vulnerable to coronavirus, amounted to deliberate indifference to excessive risk of serious harm and violated her constitutional right to be free from cruel and unusual punishment.

“For Yesenia, it was a real possibility that a minor offense could turn into a death sentence,” said Moskowitz. “Each day she spent locked up was a day in which her life was in jeopardy. We knew we had to do everything in our power to get her out.”

Days later, the First Judicial District Attorney agreed to Yesenia’s release. Yesenia was allowed to return home to her family where she could take adequate precautions to protect herself from the virus.

Our work didn’t stop there. On the heels of our petition to release Yesenia, the legal team filed habeas petitions on behalf of three immigrants, all with underlying

*Continued on page 7*



# LOCAL BUSINESSES SHOW SUPPORT FOR ACLU'S MISSION

*An interview with Mike Silva, co-owner of Rude Boy Cookies and Jeff Erway, co-owner of La Cumbre Brewing Company.*

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**A**s Americans grapple with systemic racism and police brutality in the wake of George Floyd's murder, many are searching for ways to get involved in the struggle for justice and equality. Recently, several local businesses have found ways to not only show solidarity, but make an impact. We sat down with two local entrepreneurs to talk about why they decided to use their platforms to raise funds for the ACLU of New Mexico's racial justice and police reform efforts. (Interviews have been lightly edited for length and clarity.)

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**THE TORCH:** Tell us a little bit about Rude Boy Cookies.

**MIKE SILVA:** I started Rude Boy Cookies in 2014 with Kristin Dowling, who is the head baker. She's legit—she was the 2017 Food Network Christmas cookie champion. The business was born out of my love for chocolate chip cookies and my love of Ska music. The reason the business is called Rude Boy Cookies, is because I've been a musician all my life and I've always listened to Ska. Fans of that genre are often referred to as "Rude Boys." Rude Boys is a style, a Ska subculture that had its roots in England in the 1960s. Often, members of the bands were multicultural, they were Black, they were White, and they were often dressed in these sharp suits. Really nice shoes, and porkpie hats, and a skinny black tie. That's part of that whole rude boy style. I have always identified with that.

**TT:** What made you decide to mix activism with your love of cookies and Ska music?

**MS:** The activism has always been there. My mother and my mentor had taught me the importance of being a good citizen, being mindful, caring for your community and neighbors. So once we started the business—when we had our first meeting actually—back when the business was still just an idea, I had mentioned to my business partner that I really wanted to make sure that we had a strong connection to the community and were committed to putting our best foot forward to help the city. We've always been motivated for that to be a big part of what we do.

**TT:** What led you to align the shop with the Black Lives Matter movement?

**MS:** I'm a Black man living in this country and I just can't sit and do nothing. I have to do my best to make a

difference. I'm very mindful of the history our country has towards our people and my ancestors. I also want to pay a tremendous amount of respect to my ancestors who have suffered, who were beaten in the streets and run out of their homes by the Klan. You know that wasn't that long ago. I know people who are alive today who had those things happen to them. For me to sit back and do nothing is not something I could ever be at peace with.

When this most recent George Floyd thing happened I wanted to try and make something good out of it, so we created these Black Lives Matter cookie sets. We thought they'd be popular, but they've been the most popular thing we've done in the six years we've been running this business. It kinda went national, people from all over the country were ordering them.

We've always done this thing where every so often we put a "golden ticket," like from Willy Wonka, into a box of cookies. Anyone who gets one can choose a non-profit that's important to them, and we will donate \$100 to that organization in their name. We did two golden tickets with our Black Lives Matter set and we decided to make a donation of our own too, which we decided to give to the ACLU.

**TT:** What inspired you to choose the ACLU of New Mexico?

**MS:** Informally, I know some of the people who work there and I have a lot of respect for what they do. I usually make contributions to people that I know and trust who are doing the good work, and I understand what the ACLU of New Mexico does for people who are in dire need of justice. I felt that the money given to the ACLU of New Mexico would have a far greater reach and impact than anywhere else.



**MIKE SILVA,**  
RUDE BOY COOKIES



**JEFF ERWAY,**  
LA CUMBRE BREWING  
COMPANY

**THE TORCH:** Tell us a little bit about La Cumbre Brewing Company.

**JEFF ERWAY:** La Cumbre Brewing Company was started by my wife and I back in 2010. We went into it with the very naive belief that all we had to do was make the greatest beer available, and everything else would take care of itself. And luckily for me back in 2010 that worked. I don't know how well that would hold true today, there's a lot more that goes into running a successful business than just a great product, although a great product helps.

I'll just simply state that up until this latest move on our part, we've been very apolitical. I try not to stick our nose out. I try not to take any stances on anything political because first of all it's not really any of anyone's business what my or my employees' political beliefs are. I try not to butt my nose into anybody else's business either. Needless to say, we were inspired to make an exception by participating in the Black is Beautiful project.

**TT:** What is the Black is Beautiful project?

**JE:** It was started by a couple of guys at Weathered Souls Brewing in San Antonio to bring attention to police brutality and really galvanize the efforts of the brewing community to raise awareness about systemic racism in our society. At this point there's over 1000 breweries that have joined the cause, not just across the U.S. but across much of Europe too. It's an agreed upon recipe for a 10% ABV Imperial Stout, and they ask that you donate 100 percent of the proceeds to some type of local charity that will benefit people of color. It was an amazing way to get the brewing industry to take a bit of a stand on a problem that is painfully obvious for most people.

**TT:** What inspired you to bring La Cumbre on board with this project?

**JE:** When I had a conversation with my sons, who are six and nine, about some of the social unrest that was happening around the country after George Floyd's death—I described to them what had happened to Mr. Floyd, not in great detail, but basically what happened,

and it brought them both to tears. They were both really upset about it. It was not lost on me when people started saying that it is not enough to just be against racism or police brutality. At some point if you're not part of the solution, then obviously you're part of the problem.

I desperately want to make sure that in another 20 or 30 years my kids aren't making apologies for their parents. I can't say that I'm going to be the most politically active person in the world, but this specific cause seemed to be a pretty big no brainer. We've gotten some nasty, racist, and even threatening phone calls, but if someone doesn't want to do business with us because we took a stand to say that systemic racism and police

brutality is a real problem in this country, then I don't need their business. I can do without it.

**TT: What motivated you to donate the proceeds to the ACLU of New Mexico?**

**JE:** We looked at a lot of different options, but most of them were national organizations and we really wanted to make a difference locally. So I reached out to some of my friends in the local Black community and some attorney friends of mine to get some input. Really what it came down to is that the ACLU is clearly the group best prepared to help those directly affected by over policing in black communities.

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## FIGHTING FOR THE FORGOTTEN

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ing health issues, detained in Otero County Processing Center. Following our lawsuit, two of them, including Michel have been released.

“Otero County Processing Center has a history of abuse and medical neglect,” said Joachim Marjon, immigrants’ rights attorney at the ACLU of New Mexico. “In normal times, we can’t trust the facility to protect people, let alone in times of crisis. The people detained there are living in agony, wondering if they will ever make it out or die inside the walls.”

While we’re grateful that three of our clients are no longer living in acute danger, we have a long way yet to go. Thousands more remain trapped in dangerous conditions, and our society’s indifference to the plight of the detained and incarcerated is a strong current to swim against.

A similar habeas petition that we filed to secure Kandyce’s release from Spring Correctional Center was denied on technical grounds and is currently in appeal. Our attempts to secure the release of a much larger class of people have also been difficult. In mid April, the ACLU of New Mexico, along with the New Mexico Law Office of the Public Defender and New Mexico Criminal Defense Lawyers Association, took our fight to the New Mexico Supreme Court, arguing that the state had deliberately and intentionally put people at risk by not substantially reducing the prison population. Our hope was that the Court would order the release of medically-vulnerable people, those held on parole and probation violations, and those nearing release. The Court, however, denied our petition on the grounds that we could not prove the State’s actions were “deliberate and intentional.”

The ruling was especially disappointing given the ample evidence of the danger the coronavirus poses in correctional settings. At the time of the ruling, the virus had already spread throughout facilities across the country and at least 13 other state court systems—including those of Kentucky, Massachusetts, Pennsylvania, Alabama, Maine, Montana, New Jersey, Utah, Ohio, South Carolina, Michigan, Hawaii, Washington, and the District of Columbia—had already taken steps to limit incarceration to mitigate viral spread.

Predictably, the number of positive cases amongst incarcerated people swelled in New Mexico following the Supreme Court’s refusal to intervene.

We were frustrated, but undeterred. At the time of this writing, our legal team is preparing to take part in a second legal action aimed at securing the release of hundreds of people who pose no risk to society, but who face serious threats to their health behind bars.

### The fight ahead

The appalling conditions that have led to the explosion of coronavirus infections inside our jails, prisons, and detention centers are symptoms of larger systemic problems. As we continue our battle to protect incarcerated people during this pandemic, we are equally determined in our efforts to fundamentally change the criminal legal system and civil immigration detention policies that fuel mass incarceration in our nation. We simply can’t put a bandaid on a bullet wound and expect it to heal.

Detaining people in prison-like conditions for fleeing violence and persecution in their home countries or seeking to make a better life for their children in the United States has always been unjust and inhumane. Equally unjust is our nation’s treatment of its own citizens. For too long, we’ve tried to punish our way out of every societal problem, filling our prisons to the brim rather than tackling the root causes of crime. Mass incarceration has only served to fuel racial injustice, tear families apart, and trap entire generations inside the criminal legal system. And yet none of it has made us any safer.

In fact, instead of improving public safety, COVID-19 has shown us that our addiction to incarceration is an urgent threat to public health.

There is a clear path forward. We must immediately release people from jails and prisons who are medically-vulnerable to the virus, nearing release, or held on non-serious offenses. We must also immediately allow immigrants—the overwhelming majority of whom should not be detained in the first place—to stay with family or friends as their civil immigration cases proceed.

Beyond that, we can stop making the same mistakes going forward. It’s time we dismantle the immigration detention machine and mass incarceration apparatus and build more humane alternatives. The pandemic has made it impossible to ignore that these systems, by design, only lead to human suffering and misery.

These systems are how people like Kandyce, who needed substance abuse treatment and support, not incarceration, and people like Michel, whose only “crime” was seeking asylum, end up behind bars and fearing for their lives. Even though Michel is now far from OCPC with his family in Arizona, he still lays awake worrying about the friends he left behind.

“I cannot sleep at night,” said Michel. “I suffer because I know what they are going through. Only someone who was in there knows what they are suffering. The things they do. I don’t know how to stop this.”

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## THE TORCH

The Torch is a publication sent to members and supporters of the American Civil Liberties Union of New Mexico. Please send any comments, questions, or submissions to Micah McCoy at: [mmccoy@aclu-nm.org](mailto:mmccoy@aclu-nm.org)

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## WATCH & SHARE OUR 'KNOW YOUR RIGHTS WHEN PROTESTING VIDEO'

Use your mobile device's QR code reader to hear our legal team talk about your rights when protesting.

[www.youtube.com/aclunm](http://www.youtube.com/aclunm).



# KNOW YOUR RIGHTS WHEN PROTESTING



Here in New Mexico and across the country activists are taking to the streets to protest police brutality and demand racial justice in the wake of the tragic deaths of George Floyd and Breonna Taylor. Cut out this guide and take it with you to ensure you and your companions are informed of your rights while protesting

### Your right to assemble is guaranteed by the First Amendment.

- The right to protest and assemble peacefully is a fundamental right guaranteed by the U.S. Constitution and the First Amendment.
- During a protest or demonstration, Police may order you to not interfere or obstruct them from enforcing the law—so pay attention and always keep a safe distance away from any ongoing police investigation.
- If an officer asks you to step back or step away, then you should abide by the officer's commands.

### You can record police.

- In New Mexico, you have a right to record police. This is especially important if you are witnessing police brutality or violations of people's rights.
- You can use your cellphone to take photos or videos of any encounter. If you use our Mobile Justice New Mexico App, a copy of your recording will be automatically uploaded to the ACLU's secure server.
- If an officer approaches you and your phone is in your pocket, let the officer know first that you are grabbing your cell phone. And then record the interaction.
- If you are recording a police encounter that you are not directly involved in, always keep a safe distance so that you are not obstructing the officer from doing their job.

### You can refuse a warrantless search.

- Police may not like that you're recording them, but that doesn't mean they can take away your phone. They would need a warrant or probable cause to do so.
- Police cannot require you to delete any footage or require you to hand over your phone without your consent.
- If an officer asks you to hand over your phone or to unlock your phone, tell them "I don't consent to the search or a seizure of my property. Please get a warrant."
- It is important that you assert your rights. If you don't say anything, then an officer might assume that you're okay with them searching through your phone.

### Know how to protect your privacy.

- When you go to any protest, make sure your cellphone has a strong password and consists of at least six digits so it's hard to break into.
- When you're not using your phone, put it in airplane mode. Police can use radio signals to track protestors. Don't make it easy for them.
- Disable settings that allow your phone to be unlocked with your thumbprint or phone so the police cannot unlock your phone for you, revealing information about you or the people you care about.

### You can refuse to answer questions.

- Police may stop you to ask you questions. You never have to answer any of their questions—ever. If the police stop you to talk, you may politely tell them: "Officer, with all due respect, I don't want to answer any of your questions."
- If they continue to bother you with questions, ask them politely, "Am I being detained or am I free to go?"
- If you are being detained, tell them "I wish to remain silent until I speak to an attorney."
- If you are not being detained, you may simply say: "If I am not being detained, I'd like to go" and walk away.

### Think your rights have been violated?

- If you think your rights have been violated while protesting, write down everything you remember including officers' badge or patrol car numbers.
- Get bystanders contact information for witnesses.
- Take photos of any injuries.
- Finally, we know that asserting your rights can come with real risks, so always do what feels comfortable for you, especially if you feel like doing so will put you in harm's way.