

IN THIS ISSUE

THE FUTURE WE BELIEVE IN  
Continued p.2

LIVING IN LIMBO  
Continued p.4

FAITH LEADERS SPEAK OUT  
p.5

OUT OF THE SHADOWS  
p.7

WHAT NEW MEXICANS REALLY  
THINK ABOUT JUSTICE REFORM  
p.8

VISIT [ACLU-NM.ORG](http://aclu-nm.org) TO LEARN  
MORE ABOUT OUR WORK!



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

AMERICAN CIVIL LIBERTIES UNION  
OF NEW MEXICO FOUNDATION  
P. O. BOX 566  
ALBUQUERQUE, NM 87103  
T/505-266-5915  
WWW.ACLU-NM.ORG

# THE TORCH

The Newsletter of the American Civil Liberties Union of New Mexico

Vol. 53 | No. 3 | Fall/Winter 2018

## THE FUTURE WE BELIEVE IN

*A bold plan to transform the landscape of freedom in the post-Martinez era*

By Peter Simonson, ACLU-NM Executive Director



Jim Thompson/ABQ Journal

I think we we're all in need of a little good news, and on November 6th we finally got some. Voters went to the polls and dealt the Trump administration a stinging and well-deserved rebuke, building a solid progressive majority in the U.S. House of Representatives. With Trump's stranglehold on Congress broken, the legislative branch can resume its abdicated duty checking the power of the executive. For the first time in two long years, we will have the power to block this administration's anti-American agenda and hold it accountable for its past and future wrongdoings.

As satisfying as it was to see real progress made toward curbing some of the worst excesses of Trump's cruel and lawless administration, that's not what I'm most excited about. November 6th was also a major seachange for New Mexico with

progressives sweeping races statewide, retaking the governorship, and strengthening majorities in the New Mexico House of Representatives.

These developments have profound and exciting implications for New Mexico's future. For the past eight years, New Mexico Governor Susana Martinez has been a consistent impediment to the progress of liberty in our state. During her tenure, she has relentlessly advocated for reinstating the death penalty, dumb-on-crime criminal sentencing laws, voter suppression schemes, restricting women's access to safe and legal abortion, and the persecution of immigrant communities. Last legislative session, she vetoed every ACLU-supported bill that came across her desk. On January 1, 2019, the Martinez Era ends and a new day dawns for New Mexico.

*Continued on page 2*

## LIVING IN LIMBO

*A dispatch from the frontlines of our fight against indefinite detention*

By Katie Hoepfner

“Every day you get tired from thinking, ‘Am I going to be released after one month, two months, three months?’ But every day it's ‘tomorrow’ and it's never finished.”

For ten months as he languished inside the Immigration and Customs Enforcement (ICE) detention facility in Otero County, New Mexico, Firas lived in a constant state of uncertainty, never knowing if or when he would see his wife and six children again. He was stuck in limbo, caught between a country that refused to acknowledge him and a country that wanted him expelled.

Firas was born in East Jerusalem in 1977, ten years after Israel annexed the territory from Pal-

estine in 1967. As a Palestinian Jerusalemite, he has never enjoyed Israeli citizenship, but rather, permanent legal status in the very country where he was born. Israel claims he relinquished that legal status when he became a lawful permanent resident of the United States.

The Trump administration, in its zeal to deport as many immigrants as possible, repeatedly tried to obtain Israeli travel documents for his deportation beginning in January 2018 after Firas received a conviction for a drug offense the year prior. Israel refused to issue the documents. The two nations were at an impasse, with Firas stuck in the middle. As the negotiations dragged on ICE insisted on keeping Firas locked up and away from his family

*Continued on page 4*

### ACLU OF NEW MEXICO STAFF

Peter G. Simonson  
*Executive Director*

Kathryn Turnipseed  
*Deputy Director*

#### ADMINISTRATION & FINANCE

Jackie Cronin  
*Office Administrator*

#### DEVELOPMENT

Julie Bernard  
*Director of Philanthropy*

Christine Vigil  
*Development Specialist*

#### POLICY AND ADVOCACY

Steven Robert Allen  
*Director of Public Policy*

Paul Haidle  
*Senior Policy Strategist*

Barron Jones  
*Smart Justice Coordinator*

Mary Ann Maestas  
*Field Organizer*

Stephanie Corte  
*Immigrant Rights Campaign Strategist*

#### COMMUNICATIONS

Micah McCoy  
*Communications Director*

Katie Hoepfner  
*Lead Writer*

Raychel Sanner  
*Digital Communications Strategist*

#### LEGAL

Leon Howard  
*Legal Director*

Maria Martinez Sanchez  
*Staff Attorney*

Erin Armstrong  
*Reproductive Rights Attorney*

Kristen Love  
*Staff Attorney*

Tiffany McCree  
*Paralegal*

Lalita Moskowitz  
*Equal Justice Works Legal Fellow*

#### SOUTHERN OFFICE

Nia Rucker  
*Policy Counsel and Regional Manager*

Jorge Rodriguez  
*Field Organizer*

## THE FUTURE WE BELIEVE IN

*Continued from page 1*

The ACLU of New Mexico has been preparing to take advantage of this once in a generation opportunity to proactively pursue a pro-freedom agenda. We have built a three-pronged strategy to win major advancements in the upcoming legislative session that begins January 15th:

### 1) Reform New Mexico's criminal justice system



The criminal justice system in New Mexico is broken. Over the past three decades, incarceration rates in the state of New Mexico have grown by a staggering 480%, and yet our state is still struggling with rising crime rates. It's time to take a smarter approach to crime in New Mexico. We're working with supportive legislators to push through a package of bills this session including bills that would:

- **Provide for expungement and sealing of criminal records.** Almost every other state in the country allows criminal records to be expunged after a certain amount of time. New Mexico needs to catch up and finally pass an expungement law during the 2019 session. People deserve a second chance and a clean slate when trying to move on with their lives years after they have paid their debt to society. Rep. Moe Maestas is sponsoring this bill.
- **Reduce collateral consequences of incarceration.** We're advocating for the Uniform Collateral Consequences of Conviction Act, a bill that would compile a list of the specific barriers faced by people with a criminal record in New Mexico and provide opportunities for people to mitigate those barriers. These collateral consequences often include the very things that help people gain stability and move away from criminal behaviors, like steady housing, employment, and educational opportunities. Senator Joseph Cervantes is sponsoring this bill.
- **Reform solitary confinement.** The way New Mexico's correctional system uses solitary confinement is dangerous. Research stretching back over many decades shows that prolonged solitary confinement can cause or worsen mental illness. We're advocating for a bill that would ban the use of solitary confinement on children, during pregnancy, and people with mental health issues. The bill would

also require extensive reporting on how solitary confinement is used. Representative Moe Maestas and Senator Mary Kay Papen are sponsoring this bill.

- **Reform the parole system.** We are also supporting a pair of parole reforms. One would expedite parole for elderly incarcerated people. Senator Gerald Ortiz y Pino is sponsoring this bill. The other would make a person presumptively eligible for parole after a certain period, shifting the burden to the parole board to provide evidence of why they think a person should remain incarcerated. Senator Bill O'Neill is sponsoring this bill.
- **Stop the failed War on Drugs.** Drug sentencing laws drive mass incarceration, filling our prisons with people convicted of low level drug offenses. We're working with partners on common sense reforms that would legalize marijuana and defelonize all types of drug possession. Addiction and drug abuse is a public health problem, not a criminal issue, requiring treatment, not incarceration.

### 2) Protect people in our state from Trump's deportation machine



President Trump's virulently anti-immigrant agenda has deeply impacted New Mexico communities and families. Over the past two years, Immigration and Customs Enforcement (ICE) has dramatically ramped up operations in our state, conducting early morning raids at the homes of undocumented and mixed-status families, stalking the courthouse grounds looking to arrest people when they show up for a court date, and raiding businesses and communities throughout the state. Many New Mexican families live in constant fear that they will be torn apart from their loved ones because of Trump's cruel anti-immigrant policies.

The ACLU of New Mexico is working closely with our partners on a suite of legislative proposals designed to put obstacles in the path of Trump's deportation machine. In particular, we want to limit the ability of state and local government agents to collaborate with federal immigration authorities. The details of these proposals are still being fleshed out, but we feel confident that New Mexico can lead the country in passing strong legislation to protect the rights of immigrant communities within our state.

### 3) Preserve and extend reproductive freedom in New Mexico

New Mexico has come a long way in extending reproductive freedom in the past fifty years. In the 1960s before *Roe v. Wade* guaranteed the right to safe and legal abortion nationwide, New Mexico passed a law that criminalized abortion in almost all instances, subjecting healthcare providers to criminal penalties, which leaves women at



extreme risk. Today, New Mexico stands out as one of the most progressive states where abortion access and reproductive health are concerned. Indeed, as surrounding states have passed increasingly restrictive laws governing abortion access in recent years, New Mexico has proactively worked to ensure that women's private decisions about abortion are respected and free from government interference.

Though we are a beacon of reproductive freedom today, the old 1960s criminal abortion statute still slumbers in our books—unconstitutional and unenforceable since the *Roe* decision. As the balance of the U.S. Supreme Court shifts and the future of *Roe* becomes less certain, we must act now to ensure that women and families in New Mexico are protected regardless of what happens nationally. New Mexico can never go back to a time when women's private decisions about abortion put them and their providers at risk of criminalization. Healthcare is not a crime, and abortion is healthcare. We're working closely with

our partners to pass legislation that would clean up our state's law by removing this outdated and harmful criminal statute from our books. Together, we aim to permanently protect abortion access in New Mexico—no matter what.

Our reproductive freedom goals also include working with our partners to protect and expand meaningful access to contraception. The Affordable Care Act (also known as "Obamacare") dramatically improved insurance coverage of contraception for more than 55 million women

across the country and over 300,000 here in New Mexico alone. But given the Trump Administration's hostility toward reproductive healthcare, it's important that we fight to ensure those gains are reinforced and protected in state law. This session, we're proud to support a bill that would do just that, as well as enact additional protections that go even further to ensure that both men and women in our state are able to access the contraceptive care they need without financial barriers or insurance obstacles.

### A more just, free, and vibrant New Mexico

We know it's unlikely that we'll accomplish our entire legislative agenda in 2019—but we know the ground has never been more fertile for progressive change. While the firehose of awfulness spewing out of Washington, D.C. can be overwhelming, we must never lose sight of the opportunities we have to change our own communities for the better.

Yes, we will continue blocking Trump's un-American agenda in New Mexico every chance we get—something we've been remarkably effective at thus far—but we're not letting him define our agenda. We've set a course for a more just, free, and vibrant New Mexico, and no headwinds from the White House will prevent us from taking our state towards the future we believe in.

#### ACLU OF NEW MEXICO BOARD OF DIRECTORS

- Gary Mitchell, *President*
- Molly Molloy, *Vice President*
- Angelia Moore, *Secretary*
- Beth Mohr,  
*Treasurer-Foundation*
- John Salamack,  
*Treasurer-Union*
- Revathi A-Davidson
- Abbas Akhil
- John Briscoe
- Michelle Brown-Yazzie
- Ross Chaney
- Stanley Hordes
- Bill Hudson
- Tova Indritz
- Paulina Iñigo
- Aroop Mangalik
- Peter Ossorio
- Joe Sackett
- Andrew G. Schultz
- Trish Steindler
- Frank Susman
- Leola Tsinnajinnie

#### ACLU OF NEW MEXICO LEGAL PANEL

- George Bach
- Reber Boulton
- Phil Davis
- Matthew Garcia
- Laura Schauer Ives
- Maureen Sanders
- Alexandra Freedman Smith
- David Urias
- Jane Gagne

## TAKE ACTION TO KEEP ABORTION SAFE AND LEGAL IN NEW MEXICO

Hundreds of ACLU members have already signed the petition urging our legislators to remove the old criminal abortion statute from New Mexico's books. Add your name to the thousands of New Mexicans who are taking action to permanently protect abortion in New Mexico—**no matter what.**

**Join the movement. Sign the petition.**

Type '[BIT.LY/NMABORTIONACCESS](https://bit.ly/nmabortionaccess)' into your browser to add your name.

## LIVING IN LIMBO

*Continued from page 1*

even though he posed no threat to public safety. It didn't matter that Firas had lived in the U.S. for seventeen years, that he was married to a U.S. citizen, and that he had six U.S. citizen children. To ICE, he was just more grist for the deportation mill.

"I didn't know I would have to stay so long over there. They just leave you," said Firas. "I kept thinking to myself, 'what is going on? What do you guys need from me? How can I help speed up the process?'"

Days turned into nights. Nights turned into weeks. Weeks bled into months.



**PHOTO:** Otero County Processing Center

In September, the U.S. government set its sights on Jordan — the country that issued Firas' birth certificate, even though he has never lived there. But Jordan also refused to issue travel documents.

Back home, Firas' wife struggled to care for their six children by herself. Their kids' grades slipped. Bills piled up. The biggest blow came when Firas' mother passed away and he couldn't attend her funeral.

Through it all, Firas tried everything he could to keep his suffering from his kids.

"If I am in pain, I don't like them to share it," said Firas. He would tell them, "Everything is alright. I am alright. I am happy," to try to spare them from further sadness.

It was difficult for Firas and his family, but they weren't alone in their fight. The ACLU of New Mexico agreed to represent Firas, and on September 28, we filed a Writ of Habeas Corpus petition demanding ICE stop jailing him in violation of his constitutional rights.

In *Zadvydas v. Davis*, the U.S. Supreme Court held that detaining noncitizens past six months, even if their birth countries will not accept them, is unconstitutional—unless the government will

deport them in the reasonably foreseeable future. Freedom from imprisonment, the Court said in its 2001 decision, "lies at the heart of the liberty that [the Due Process] Clause protects."

With pressure mounting from the ACLU, in October, the government took its efforts to remove Firas to extraordinary lengths. Although Firas has never lived in Palestine, has never possessed Palestinian documentation, and the U.S. government does not even recognize Palestine as a country, ICE attempted to deport him there.

It is nearly impossible for a person who is forcibly removed to Palestine to restore their Jerusalem residency.

"If the government would have succeeded in obtaining a Palestinian travel document, it would have been complicit in stripping him of his ability to ever restore his rightful residency in Jerusalem," said ACLU-NM staff attorney Kristin Greer

Love. "That is a grave violation of international humanitarian law and is a testament to the extreme lengths the Trump administration will go to deport people."

Thankfully, Palestine refused to issue a travel document.

On October 12, after weeks of intense negotiation with the ACLU, and out of options, ICE finally released Firas from custody under an order of supervision.

"I did almost ten months and it (was) like five years or something," said Firas. "I have a lot of white hair from that year."

Unfortunately, Firas is far from alone in his experience. This year, the administration categorically

denied humanitarian parole to over a thousand people fleeing persecution, torture, and death to deter families from seeking asylum. And it detained thousands of children far away from their asylum-seeking parents for months on end.

The ACLU successfully challenged these policies in court, halting the arbitrary detention of asylum-seekers and family separation. If ICE violates these court orders, or continues to hold long-time residents like Firas indefinitely, we will fight the administration every step of the way, as prolonged captivity violates the essence of American due process.

Firas is out of detention, but it's been hard to recover from nearly a year away from his home. He's struggling to find work, to pay months of missed rent, and to make up for lost time with his wife and children. On top of that, he's required to wear a GPS bracelet and to check in with ICE regularly. He's still in limbo, but he's with the people he loves most, and that gives him hope for a brighter future.

"To see my family happy, I am happy," said Firas. "To be around my kids, that's what keeps me going."

## ACLU BOARD OF DIRECTORS NOTICE OF ELECTIONS, 2019

If you desire to run for one of the seven open positions on the ACLU-NM Board of Directors in 2019, please send to the ACLU-NM Nominating Committee a 250 word statement expressing your interest in and qualifications for serving on the Board. With the Board's approval, the Committee will send a slate of 7 recommended candidates to the membership for a vote in March. Candidates who are not selected for the slate are eligible to place themselves on the ballot by obtaining a petition signed by 1% of the ACLU-NM membership (currently 11,707 members total), supporting their nomination, along with a 250 word statement of interest.

The ACLU-NM office must receive statements of interest by January 31, 2019. Nominees' names will be placed on the election ballot and their statements will be published on the ACLU-NM website.

Please mail statements to:

Nominating Committee  
c/o ACLU of New Mexico,  
PO Box 566, Albuquerque, NM  
87103

Statements may also be faxed to:  
(505) 266-5916

Information on voting will be sent to members at least two weeks prior to the election. The election will be held on March 31, 2019.

# FAITH LEADERS SPEAK OUT: RELIGIOUS FREEDOM IS NOT A LICENSE TO DISCRIMINATE

*An Interview with the Rev. Liz McMaster*

**F**aith anchored the Rev. Martin Luther King Jr.'s tireless fight for legal equality for African Americans. His activism and his sermons helped deliver a deathblow to the then popular notion, espoused by segregationists of the day, that Jim Crow laws were divine mandate. Scores of faith leaders, whose religious beliefs also inspired them to take action, joined the Rev King in his quest for equality and social justice.

50 years after the Rev. King's death, the country is experiencing a resurgence in religious-based attacks on equality. The Trump administration has introduced policies aimed at making it easier for employers and universities to deny women birth control, for federal contractors to discriminate against LGBTQ people, and for hospitals to deny people essential healthcare, all under the guise of religious liberty. And states across the country are introducing similar bills, in an attempt to override local non-discrimination laws.

We sat down with the Rev. Liz McMaster, a retired Unitarian Universalist minister, who not only recognizes that religious freedom does not mean the right to discriminate against or harm others, but who draws upon her faith to promote social justice.

**The Torch:** Tell us about how you became a minister.

The Rev. Liz McMaster: I became involved in the Unitarian Universalist church in the South shortly after I got married. I liked that the Unitarians said, "God gave us a brain and let's use it." And they merged in 1965 with the Universalists whose belief is "God is love." And I thought, "Okay, you put the mind and the heart together and that's a great combination."

At the same time, I became involved in the civil rights movement. To me, they were one in the same. I did work with the Southern Christian Leadership Conference and was blessed to meet Dr. King. I actually sat at his house during his funeral and then worked for Mrs. King, Coretta King, for 6 months, sorting messages of sympathy and grief for her and for her family that came in from all over the world alongside other volunteers.

Then I went to Harvard Divinity School and started ministry when I was 60 years old. From there, I helped start a church outside of Charlotte, North Carolina and after three years I went to Florida, where I stayed for six years. A colleague of mine suggested that maybe I would like interim ministry and then I started doing one and two year stints in a variety of places. I was in Los Alamos, Roanoke, Philadelphia, and Colorado Springs and it was a wonderful experience. I did that for 15 years and then I ran out of steam at 75.

**The Torch:** Over the last two years, the Trump administration has taken a number of measures aimed at making it easier for individuals and institutions to deny healthcare and services to women and LGBTQ people, with the supposed goal of promoting religious liberty. What does religious liberty mean to you?

The Rev. Liz McMaster: Well, it basically means for me to follow my God and for me to do what I think is right determined by my religious beliefs. I think it's wrong that people say in the name of their religion that it's okay to curtail somebody else's freedom. It seems to me to be a very, very narrow view of what their God is and what their religion is.



**The Torch:** At what point does religious liberty morph into religious imposition or discrimination?

The Rev. Liz McMaster: When it infringes on somebody else's freedom. I believe that everybody has a right to follow their own religious beliefs, with the stipulation that those beliefs don't impugn on somebody else in a harmful, hurtful way.

**The Torch:** You volunteer your time to make it easier for women to make the reproductive healthcare choices that are right for them and their families without interference from the government or from anyone who might object to abortion on religious grounds. Why?

The Rev. Liz McMaster: I'm old enough to have known people who were of reproductive age before Roe v. Wade who struggled. I knew of women who died over botched abortions and self-induced abortions. That shouldn't happen. We talk on one hand about freedom and then on the other hand we restrict people from living out their lives as they see fit. It seems very wrong to me.

“

I believe that everybody has a right to follow their own religious beliefs, with the stipulation that those beliefs don't impugn on somebody else in a harmful, hurtful way.

”

*Continued on page 6*

## WHAT DO NEW MEXICANS REALLY THINK ABOUT CRIMINAL JUSTICE REFORM?

This fall, **New Mexico SAFE**, a criminal justice reform coalition of which the ACLU of New Mexico is a member, released the results of one the most comprehensive polls ever conducted concerning New Mexicans' attitudes about crime, public safety, and justice. The poll revealed that New Mexicans **strongly desire reform of the criminal justice system** and favor rehabilitation and treatment over incarceration as a means of increasing public safety. The poll revealed that:

**75%**

**of New Mexicans are worried about crime in their communities**

**70%**

**think it's important to reduce the number of people we incarcerate in our state.**

**75%**

**support rehabilitation and treatment over punitive approaches to crime.**

*Continued on opposite sidebar.*

## FAITH LEADERS SPEAK OUT

*Continued from page 5*

**The Torch:** So what exactly do you do?

The Rev. Liz McMaster: I am involved in the Religious Coalition for Reproductive Choice here in Albuquerque. I drive women to get abortion care. I know that there are many people of good faith that believe abortion is not such a good idea, but then again, that's infringing upon somebody else's needs and beliefs. These women are not impugning on anybody else's freedom. I don't ask them why they are seeking abortion care because I think that's an invasion of their privacy, but some of them tell me what their lives are like, and many of them are experiencing great difficulties. I drove a woman who was a senior at a major university. She and her boyfriend planned to get married, but they wanted to finish their education first. And it was very difficult for her. First, making the decision and then going through the rigmarole with the state that she lived in not helping her in any way. Fortunately, she found us and was able to do what she thought was right for her life and her partner's life.

**The Torch:** Does your faith play a role in your decision to help these women?

The Rev. Liz McMaster: Absolutely. My faith is involved in pretty much everything I do. Unitarian Universalists have seven principles that guide their lives. The first principle is that we try to promote the inherent dignity and worth of every person. For me, promoting the inherent dignity and worth of women means doing everything I can to make sure they are able to carry out the choices that they've determined are right for them and their families. Placing barriers between women and their reproductive freedom not only undercuts their dignity and autonomy, it puts their lives at risk.

**The Torch:** Your faith welcomes lesbian, gay, bisexual, queer, transgender and gender non-conforming people. Is that right?

The Rev. Liz McMaster: It's not just an acceptance — it's a real desire for that diversity because it makes a faith stronger. If all I do is surround myself with people who are just like me, than I haven't grown at all. The role of religion is strengthening of belief as well as a teaching role.

**The Torch:** As a faith leader, why is it important to you that LGBTQ people be free from religious-based discrimination?

The Rev. Liz McMaster: I have a daughter who is a lesbian and she came out to me in her early twenties when she wasn't sure who she was herself. It was difficult for her and my answer to her was, "I want you to be happy with whomever you find happiness with." And she said, "Oh, but mom you want me to have grandchildren." And I said, "I think that's way secondary to you finding who you are and who you're going to spend your life with." And actually she did give me a grandchild so I got that too.

**The Torch:** Does it bother you when you see politicians and religious leaders, many of whom identify as Christian, calling for religious exemptions to non-discrimination laws?

The Rev. Liz McMaster: *Yeah.* We need to understand what Jesus' life was all about. I mean, Jesus was not only a really warm, loving human being, he was also a systems change person and he died trying to change the systems under which his people were living. I think there is something wrong in Washington, and we have a responsibility to change it.

# Give the gift of liberty this holiday season!



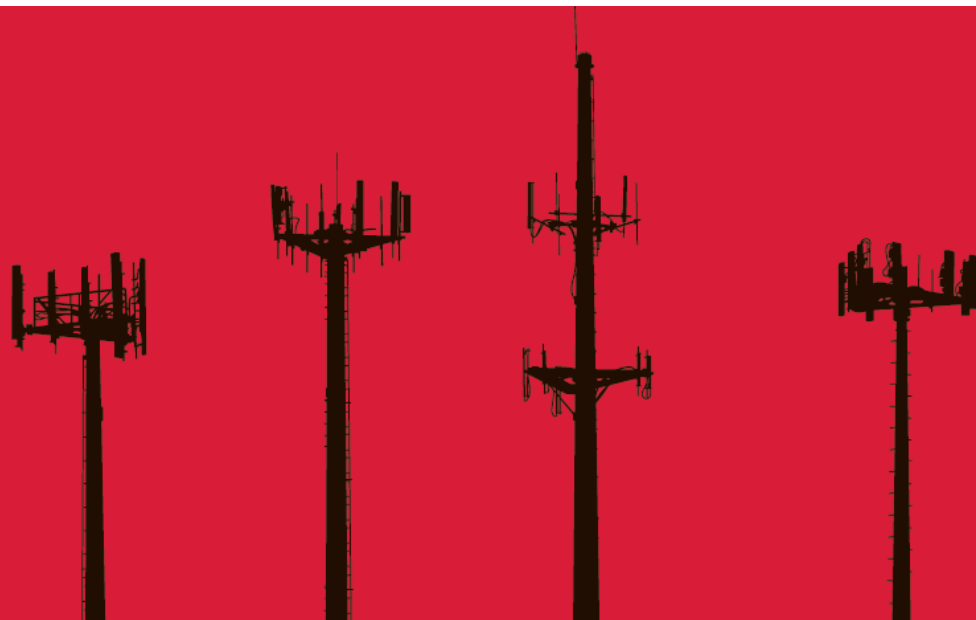
**W**hat better way to show love to your friends and family this holiday season than to help make the state they live in a more free and fair place? Your gift is especially important as we continue to face increasingly complex issues that require strong and sustained efforts. With you by our side, we will strategically confront these ongoing threats to our civil liberties. You may send your contribution in the envelope included with this newsletter or online at [www.aclu-nm.org](http://www.aclu-nm.org).

**Happy Holidays!**

# OUT OF THE SHADOWS

*How the ACLU of New Mexico helped expose and regulate APD's highly secretive and invasive new surveillance technology*

By Katie Hoepfner



The Stingray doesn't need eyes to hunt. The flat, boneless fish uses special sensors to detect the electrical signals of surrounding prey. Then, it attacks—sucking its meal up from underneath its body.

It's a fitting name for the fake cellular tower manufactured by the Harris Corporation. The Stingray, like its namesake, tracks targets by detecting and exploiting signals. The devices, also known as IMSI catchers and cell-site simulators, are small enough to fit in the back of a police van, but they're capable of tricking all phones within range into pinging it and revealing their unique identifying numbers and locations. Some models are even capable of accessing cell phone browser activity, SMS text messages, and the content of phone calls.

Law enforcement agencies across the country now have at their fingertips a vast arsenal of technology that allows them to track your movements and intrude on your private life in ways we could not have imaged a few decades ago.

Drones give police an eye in the sky, facial recognition-linked cameras give them eyes on the ground, and predictive policing programs project their eyes into the future.

Surveillance technology has developed so quickly that laws and policies meant to protect the public's privacy have not kept up with new methods. Sometimes, the public isn't even aware that a new surveillance technology exists. The ACLU plays a critical role investigating these technologies, ensuring they see the light of day and that they are not employed without proper oversight and accountability.

In July 2017, we sued the Albuquerque Police Department (APD) for its refusal to disclose information on whether or not it possessed Stingrays. That lawsuit, which was settled in January, 2018 revealed that APD has possessed technology manufactured by the Harris Corporation since at least 2014, and similar technology manufactured by DRT since 2012.

When acquiring the devices, the department never consulted or informed the public. If not for our lawsuit, we'd likely still not know of their existence. A matrix of non-disclosure agreements between manufacturers of the technology, the FBI, and local law enforcement, prevent local law enforcement from disclosing ownership and use of the technology to the public, or even to the courts when presenting evidence gathered using the devices.

Bringing these powerful technologies into public view was an important first step in protecting New Mexicans' privacy rights. But we didn't stop there.

After the lawsuit settled, a team from the ACLU of New Mexico met with representatives from the City of Albuquerque and from APD. We wanted to know: How were police using Stingrays? How often were they deploying them? What privacy protections, if any, were in place for the public? Did the department require officers to obtain a warrant before using them? Was anybody overseeing and auditing the use of the technology? What was the department doing with the data afterwards?

We left that meeting with serious doubts that APD was adequately protecting the public's privacy. The non-disclosure agreements with Harris Corporation and the FBI prevented representatives from the City and APD from even fully answering most of our questions. Unsettled, we urged the department to put in place a suitable and comprehensive policy that would better protect the civil liberties of New Mexicans.

Shortly after, by the City's invitation, we drafted policy recommendations to guide the use of cell-site simulator technology, many of which APD incorporated into its draft Standard Operating Procedure.

Albuquerque residents now have a measure of protection. The policy requires officers to get a warrant, excepting exigent circumstances, before using the technology; prohibits the use of the technology for accessing the contents of communications; requires APD to keep a log detailing when the technology is used, and conduct a monthly audit to ensure compliance with the law.

As we look toward the future, we can be certain that police departments will seek to deploy new and more powerful technologies. Some, like the Stingray, will be developed by the military and adapted for law enforcement use. Others, will come from corporate giants, like Amazon, who is currently marketing advanced facial recognition technology to federal and local law enforcement agencies across the country.

At the same time, all of us will continue to acquire advanced technology for our everyday use that vastly expands our digital footprint, including data concerning the most intimate aspects of our lives.

*Continued on page 9*

72%

believe that people suffering from addictions should be in treatment programs, not prison.

85%

believe that people suffering from mental health disabilities need mental health services, not incarceration.

To learn more about the poll and NM SAFE's legislative roadmap for moving New Mexico towards a more holistic model of public safety, visit [www.nmsafe.org](http://www.nmsafe.org).

## 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 article submissions to Micah McCoy, Editor and Communications Director at: [mmccoy@aclu-nm.org](mailto:mmccoy@aclu-nm.org)

Printed in Santa Fe, NM.

## WWW.ACLU-NM.ORG

American Civil Liberties Union of New Mexico  
PO BOX 566  
Albuquerque, NM 87103  
[info@aclu-nm.org](mailto:info@aclu-nm.org)  
Tel: (505) 266-5915  
Fax: (505) 266-5916

SOUTHERN OFFICE  
Las Cruces, NM  
Tel: (575) 527-0664  
Fax: (575) 527-0111



## OUT OF THE SHADOWS

*Continued from page 7*

The ACLU will fight to protect and expand your privacy rights along the way.

Just this past summer, the national ACLU won the biggest privacy rights victory of the digital age. In *Carpenter v. the United States*, the Supreme Court ruled that police must obtain a warrant before they can seize information about people's location history from cell phone companies. While the ruling is limited to historical data, the Court's decision

leaves open the possibility for the future protection of other kinds of data, like that generated by your smartphone and other connected devices.

In nature, the Stingray's prey has no idea that their electric fields make them targets. We, however, know better. We realize the technology that we depend upon to get us from point A to point B, to communicate with family and friends, and to document our lives, is also a target of big fish—or Big Brother. Because of this, we remain vigilant and continue to fight for a future in which the Fourth Amendment fully protects both your physical and digital privacy from prying eyes.

## 2018 ACLU OF NEW MEXICO BILL OF RIGHTS CELEBRATION



*Executive Director Peter Simonson presents the Legacy Award to the staff of Somos un Pueblo Unido.*



*LEFT: ACLU-NM Legal Director Leon Howard presents Attorney of the Year award to Santa Fe attorney Dan Cron.*



*RIGHT: ACLU Deputy Legal Director Jeffery Robinson delivers the keynote address.*