



the TORCH

The Newsletter of the American Civil Liberties Union of New Mexico

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By Micah McCoy

Like dry wood, when enough injustice piles up in one place, it becomes a tinderbox. Then a single spark can cause it to burst into flame. For Albuquerque, James Boyd was that spark.

On March 16, 2014, Albuquerque Police Department (APD) officers responded to a report of a man illegally camping in the Sandia Foothills above the Copper Ave. Trailhead. When they arrived on the scene they encountered Boyd, 38, who acted erratically, claiming to be a government agent working for the Department of Defense. A standoff lasting hours ensued, with more than 40 officers, including SWAT, confronting one mentally ill camper.

James Boyd's story was fairly typical for someone in his situation. Like so many other people living with mental illness, he experienced long bouts of homelessness punctuated by stints in psychiatric hospitals and correctional institutions. Most of the crimes he committed directly flowed from his untreated mental illness, and most of the mental health care he received while incarcerated. New Mexico, like ev-

erywhere else in the United States, has dismantled its civil mental health apparatus, turning its prisons and jails into de facto mental health facilities.

The video of the incident, captured from the helmet camera of one of the SWAT officers, feels simultaneously surreal and inevitable. The final moments of the standoff show Boyd surrounded by armed officers as he gathers his backpack and prepares to comply with their orders to come down off the hill from his camp. As he prepares to walk down, he attempts to assure the officers that he means them no harm. Then all hell breaks loose. An officer issues a command: "Do it." A flash-bang grenade explodes at Boyd's feet, and the K9 officer orders his dog to take him down. Boyd, disoriented, frightened, and mentally unstable pulls out two small knives as the dog lunges at him. Officers scream for him to get on the ground, and Boyd turns his back as if he were preparing to lie down face first on the incline of the hill. When he turns away, two officers shoot him in the back three times, mortally wounding him. They

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Executive Director's Notes: Help Us Move APD Forward

Since the mid-1970s, Albuquerque has seen three different cycles of heightened police violence. Each new spike has prompted city leaders to strengthen civilian oversight of the police, but with little success at reining in the excessive use of force. During the current cycle, which began in early 2010, Albuquerque Police Department (APD) officers have shot 40 people, killing 27—a rate that far exceeds the frequency of officer-involved shootings in larger cities. What distinguishes this cycle from the previous two, however, is that the Department of Justice (DOJ) has intervened and is seeking a court-enforced agreement to force structural reforms. The agreement will require the City to implement changes in eight different areas related to the use of force (training, policy, recruitment and hiring, civilian oversight, etc.) along a rigorous timeline.

A number of obstacles stand in the way of successful reform. Compliance with the terms of the DOJ agreement will cost the City untold millions of dollars—none of which



PETER SIMONSON
Executive Director

has yet been allocated. The Albuquerque Police Officers Association openly disputes the DOJ's findings and could take action to impede the reform process (recently their

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Culture of Violence

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fire several “bean bag” rounds from a shotgun at his prone body, and sic the dog on him again as he lies motionless in a pool of his own blood. The final moments of the video show the officers handcuffing Boyd, as he begs them to stop hurting him with his last ragged breaths.

A few days after Boyd’s death, the APD released the footage of the incident to a horrified public and anointed the killing “justified,” alleging that the officers felt “threatened” by Boyd. The casual justification of what most Albuquerque residents saw as state-sanctioned murder sparked protests around the city. On March 25, thousands of community members took to the streets in peaceful protest, demanding justice for James Boyd and an end to excessive use of force against Albuquerque residents. Later that night, officers shot and killed Alfred Redwine, another man with a history of mental issues. Five days later, APD and Bernalillo County Sheriff’s Deputies dispersed a second non-violent protest with tear gas.

The unvarnished and shockingly brutal depiction of Boyd’s killing in the video captured that day may have been the boiling point, but the underlying problem of police excessive use of force has been simmering for decades. Longtime residents of Albuquerque are quick to point out that APD has had a reputation for excessive force since at least the 1970s. (See interview with civil rights attorney Phil Davis on page 4), but for most people the growing awareness of the APD violence problem began in 2010, the year in which officer involved shootings spiked dramatically. As of this writing, APD has shot 40 people, 27 fatally, since January, 2010. Per capita, this constitutes a rate of officer involved shootings exceeding that of New York City by a factor of eight.

As more and more victims were added to the list, patterns began to emerge:

- The people who APD officers shoot tend to be mentally ill and unarmed, or they are armed but pose no immediate danger to others.
- Officers routinely escalated the encounter rather than working to defuse the situation.
- No use of deadly force is ever found to be “unjustified” by the APD’s internal review process.
- No officer is ever disciplined or held accountable for excessive use of force.

Indeed, the circumstances surrounding the first victims of APD’s killing spree look much like those still occurring today. Ken Ellis III, who is widely considered to be the first victim in the current spate of officer involved shootings in Albuquerque, was an Iraq war veteran who was badly wounded in the same explosion that killed his best friend. Though he recovered physically, he suffered from debilitating PTSD and had trouble functioning in society when he returned home. On January 13, 2010, officers converged upon his vehicle, which they suspected might be stolen, and closed in with guns drawn, yelling commands as Ellis held a gun to his own head—exactly the sort of thing mental health professionals say you should not do when a person is threatening suicide. One of the officers fired a single shot through Ellis’s neck, causing the 25 year-old war veteran to quickly bleed to death at the scene. Ellis never pointed the gun at anyone other than himself. The officer

was cleared of wrongdoing in the shooting by both APD internal affairs and a grand jury. Three years later, a State District Judge ruled that the officer had used excessive force and a jury awarded Ellis’s family \$10.3 million, one of the largest judgments ever meted out against the city.

As the death toll steadily climbed, the Albuquerque public grew more and more alarmed. An ever expanding army of family members and friends of APD victims advocated tirelessly for better oversight, training, and accountability for APD officers, hounding elected officials and demanding they take action to bring meaningful change to the department. By the Summer of 2011, with the death toll at 13, the Albuquerque City Council voted to request that the U.S. Department of Justice (DOJ) investigate possible civil rights violations by Albuquerque police. Albuquerque Mayor Richard Berry vetoed the bill, claiming that his administration was “already working in a collaborative fashion” with the DOJ.



Protesters gather in front of APD HQ.

However, every APD internal review continued to find every use of fatal force “justified,” and the District Attorney’s Office and the toothless civilian Police Oversight Commission marched in lock step. And with each new shooting, each new surveillance video capturing officers beating restrained suspects, public trust in the department eroded further.

Finally, after a year and a half of speculation, the Department of Justice announced in late 2012 that it would immediately begin an investigation of APD and “peel the onion to its core” to determine whether the department has a systemic pattern of violating people’s civil rights. The death toll since 2010 then stood at 17.

The DOJ investigators spent the next year and a half reviewing officer involved shootings, interviewing officers at every level in the department, and combing through hundreds of police reports documenting use of force against the Albuquerque public. Less than a month after the Boyd video caused Albuquerque to take to the streets, the DOJ released the findings of their investigation. Their report was scathing, finding that APD “engages in a pattern or practice of using excessive force during the course of arrests and other detentions in violation of the Fourth Amendment...” (You can read the full summary of findings in figure 1 on the following page.)

Due to the pervasive and systemic nature of civil rights violations found by the DOJ during their investigation, they will intervene to ensure that the Albuquerque Police Department implements the reforms necessary to restore constitutional policing and end the rampant use of excessive force against the community. The DOJ and APD will negotiate a consent decree, a court-enforced agreement that outlines the steps the department must take. This consent decree will be in place for several years as APD does the difficult work of rooting out the culture of violence that has so permeated the department.

It will be a long difficult road ahead, but the Albuquerque community desperately needs a police force it is not afraid of. The DOJ and the City of Albuquerque report that they believe that the consent decree will be finalized and in place by the end of this year, but APD must demonstrate its commitment to changing its ways by making what changes it can in the interim because one more preventable death is too many. And APD has already shot four people, three fatally, just since the DOJ released its report.

Figure 1: DOJ Summary of Findings

While officers may be required to use force during the course of their duties, they must do so respecting constitutional guarantees against unreasonable searches and seizures. For too long, Albuquerque officers have faced little scrutiny from their superiors in carrying out this fundamental responsibility. Despite the efforts of many committed individuals, external oversight is broken and has allowed the department to remain unaccountable to the communities it serves. Based on our investigation, we find that the department engages in a pattern or practice of using excessive force during the course of arrests and other detentions in violation of the Fourth Amendment and Section 14141. We find this pattern or practice in the following areas:

- 1) Albuquerque police officers too often use deadly force in an unconstitutional manner in their use of firearms. To illustrate, of the 20 officer involved shootings resulting in fatalities from 2009 to 2012, we concluded the majority of these shootings were unconstitutional. Albuquerque police officers often use deadly force in circumstances where there is no imminent threat of death or serious bodily harm to officers or others. Instead, officers used deadly force against people who posed a minimal threat, including individuals who posed a threat only to themselves or who were unarmed. Officers also used deadly force in situations where the conduct of the officer heightened the danger and contributed to the need to use force.
- 2) Albuquerque police officers also often use less lethal force in an unconstitutional manner. We find that officers frequently misused [Tasers], resorting to the use of the weapon on people who are passively resisting, observably non-threatening but unable to comply with orders due to their mental state, or posed only minimal threat to the officers....Additionally, Albuquerque police officers often use unreasonable physical force without regard for the subject's safety of the level of threat encountered. Officers frequently use take down procedures in ways that unnecessarily increase the harm to the person. Finally, officers escalate situations in which force could have been avoided had they instead used de-escalation techniques.
- 3) A significant amount of the force we reviewed was used against persons with mental illness and in crisis. APD's policies, training, and supervision are insufficient to ensure that officers encountering people with mental illness or in distress do so in a manner that respects their rights and is safe for all involved.
- 4) The use of excessive force by APD officers is not isolated or sporadic. The pattern or practice of excessive force stems from systemic deficiencies in oversight, training, and policy. Chief among these deficiencies is the department's failure to implement an objective and rigorous internal accountability system. Force incidents are not properly investigated, documented, or addressed with corrective measures.

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APD Forward

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counterparts in Seattle sued to enjoin the consent decree that DOJ secured with the Seattle Police Department). And while Albuquerque's mayor has not openly opposed the agreement, the experience from other cities is that officials often drag their heels on reform when costs begin to mount and they encounter resistance within the police department.

Albuquerque needs a concerted movement of community leaders to hold the City accountable to the reform process. It must champion the City's efforts when they show commitment to reform and mobilize the community to apply pressure when they don't. It must be strategic and focused on the goal of maximizing the impact of the DOJ consent decree process.

For this reason, earlier this year, the ACLU convened over a dozen Albuquerque organizations to form APD Forward, a long-term campaign to monitor the City's compliance with

DOJ-initiated reforms and apply political pressure when necessary. The APD Forward coalition consists of key organizations that have a stake in the reform of APD: homeless service providers, social workers, disability rights defenders, criminal defense attorneys, community action groups, and others.

Another vital part of our campaign is you. APD Forward needs your support. You can visit our campaign website at APDForward.org to learn what you can do to help make APD the responsible, trustworthy, and community-friendly police force we all know it can be. As our campaign gathers momentum you will have opportunities to volunteer, engage with your communities, and directly advocate for police reform.

The DOJ's intervention has given Albuquerque a unique opportunity to reverse 40 years of police aggression and a departmental culture that increasingly views civilians as enemies in a theater of war. This is a chance that may not come around again. Please join us; together we can seize this opportunity and build a better Albuquerque.



www.APDforward.org

APD Shootings since 2010

■ FATAL

■ NON-FATAL

- 1/9/10
Aaron Renfro
- 1/13/10
Kenneth Ellis III
- 1/29/10
Wayne Cordova
- 3/4/10
Jose Castillo
- 3/29/10
Mickey Owings
- 4/14/10
Benjamin Marquez
- 6/10/10
Chris Hinz
- 6/14/10
Julian Calbert
- 7/27/10
Len Fuentes
- 8/17/10
Enrique Carrasco
- 9/14/10
Chandler Barr
- 10/19/10
Daniel Gonzales
- 10/31/10
Alexei Sinkevitch
- 11/11/10
Russell Tenorio
- 2/9/11
Jacob Mitschelen
- 4/12/11
Christopher Torres
- 5/10/11
Alan Gomez
- 6/4/11
Raymond Garcia
- 6/26/11
Orlando Paisano

A Problem 40 Years in the Making

An Interview with Albuquerque Civil Rights Attorney Phil Davis



Q: You've had a bird's eye view of the APD for the past 35 years you've been practicing law in Albuquerque. What have you observed about the APD's use of force in that time?

The justice report got it right in terms of describing the APD as having a culture of violence. That's never been different in all the years I've been here. Most cops are good cops, but they've always had a small number of bad cops, and they've never been very good about policing the bad cops, and they've always been willing to allow them to solve problems through the use of violence.

Q: When did you first notice that APD had an internal culture and accountability problem?

Right away. When I first started practicing law in 1981, I started doing civil rights cases, and it was pretty obvious to me that there were bad cops and good cops. I would see the same bad cops over and over and over. Some of those cops had such obvious ways of dealing with the public that someone could come into my office, and I would immediately know which officer they had encountered. Those officers were allowed to persist and continue in that kind of conduct for years and years and years with no one stopping them.

Q: What enables bad cops to continue patterns of bad behavior?

Bad screening is what lets them in in the first place, then inadequate supervision with nonexistent discipline. There's also an absolute unwillingness for officers to turn in other officers who engage in misconduct. APD internal affairs has been meaningless for a very long time, and supervision has been awful from the top. It goes way back. Whitey Hanson was the chief back in the 70s when they were shooting people and nothing's changed. The problem with former Chief Schultz was that he had intermediate level supervisors who were willing to impose meaningful discipline on officers, and then routinely Shultz would drastically reduce the penalty. I'm not a cop. I recognize it's a hard job. But every person in uniform chose to become a police officer, and with that awesome power comes awesome responsibility. And when cops aren't forced to maintain the equilibrium between both sides of that equation—which is a supervisory responsibility—things get out of whack real fast. And when you put a gun on a guy's hip, when things get out of whack, they get really out of whack.

Q: How has mayoral leadership played into this problem?

The mayors compounded the problem. When Ken Shultz was mayor, he never thought that a cop did anything wrong. Ever. Marty Chavez comes along later and implements the "No Settlement Policy," and all of a sudden officers realize that "not only can I do what I want, but the department and the mayor will back me up no matter what I do." They would never settle a case, which is at least some indication that the officer engaged in misconduct. It really didn't change very much under our current mayor, other than he realized he needed to start settling some cases. In terms of the shootings, he was asleep at the switch until finally he couldn't ignore it any longer.

Q: What is the most jarring example of police excessive use of force you've encountered over the years.

Lopez v. House. Johnny Joe Lopez was this two bit thief in Old Town who got caught breaking into a shop owner's car trunk back in the late 80s. The cops chased him all over Old Town, and they finally cornered him. But they did a poor job of it. They block his car in with their two patrol cars, but they leave a huge hole for Johnny to drive through. So of course that's what he does. One of the two cops jumps out of the way, because after all it's a misdemeanor. The guy robbed a tire or something out of a trunk. So what? They know who he is. They know he lives around the corner, they know he's been living there his entire life. So the one cop thinks "Screw it. I'll get out of the way, find Johnny Joe later." The other cop stands his ground and puts four bullets in him. We took that case to trial, and got a verdict against the department. But here's what makes this case the worst ever: APD used that case as a teaching tool after we got a verdict. Not as an example of improper use of force, but as a shining example of a cop doing the right thing. The message was: do anything you want, kill anyone you want, all that matters is you going home at the end of the day.



PHOTO: APD officers standing over the body of Johnny Joe Lopez shortly after they shot and killed him

Q: How can we use officer-worn cameras to increase officer accountability?

Without this technology, nobody would have known what happened on that hill the day they killed James Boyd. That technology needs to be incorporated into everyday life for every single cop in Albuquerque. It has to be technology that works, not one that stops recording, runs out of memory, runs out of batteries, etc. There must be serious consequences when officers fail to engage the cameras. I've never seen meaningful discipline imposed on an Albuquerque police officer for failing to turn on a recorder. Not once. Not ever. It just doesn't happen. In my experience, officers routinely don't turn on the recorders or "lose" their tapes. It's all very convenient. That can't continue to happen. It just can't.

Q: Where can Albuquerque look to for an example of a police department that's made positive changes?

About 20 years ago, the San Diego Police Department decided to raise the education requirement for officers, raise the minimum age, increase the entry level pay—which initially cost them a lot of money. But they figured out that with more mature, better educated, better paid cops, they

were saving millions and millions and millions of dollars in claims against the department, because their officers were engaging in less excessive use of force. Over the course of 10 years they saved the city something like 200 million dollars in claims. Then, guess what? They now had more money to invest back into the police department.

Q: Do you think that the city can turn this problem around?

Yes, but this is a problem built over the course of 40 years, and we're not going to fix it overnight. It is really impor-

tant that we keep this issue in the forefront, and not let it just become yesterday's news. It is really important that we continue to hold this administration accountable. It's like I told Mayor Chavez fifteen years ago, "Go ahead, put me out of a job." Prove to me that your officers can do their job without engaging in excessive force or false arrest. I'll find some other kind of law to practice.

Phil Davis served as co-legal director for the ACLU of New Mexico for more than 20 years and currently is a member of the ACLU-NM legal advisory panel.

The Militarization of American Policing

By Micah McCoy

Across America, police officers are starting to look less and less like Andy Griffith and more and more like GI Joe.

Many New Mexicans saw this alarming transformation up close and personal in the recent protests against the rash of officer involved shootings in Albuquerque in late March. The officers on the scene of the protest were dressed in full riot gear with Kevlar helmets, face shields, gas masks, and body armor. Armored vehicles originally designed for use in the Iraq war loomed overhead.

This summer, the national ACLU released *War Comes Home: The Militarization of American Policing*, a report that documents how militarized policing erodes Americans' rights and puts the public at risk. Especially at issue is the expansion of the use of Special Weapons And Tactics (SWAT) teams from hostage and active shooter incidents to routine police operations. The report found that 79% of SWAT team deployments were to execute search warrants, the majority of which were drug related.

The report provides a snapshot of the realities of paramilitary policing and highlights several horrifying anecdotes of how hyper-aggressive policing can go terribly wrong, including incidents in which:

- A SWAT team threw a flash-bang grenade into an infant's crib, injuring him so badly he had to be placed in a medically induced coma;
- A SWAT team opened fire in a home, killing a 26 year-old mother and seriously injuring the 14 month old child she was holding;
- A SWAT team accidentally shot and killed a grandfather of 12 as he lay facedown on the floor with his hands on his head;
- And, a SWAT team who shot a 26-year-old Iraq war veteran 22 times when he went to investigate strange noises outside his home.

In each one of these incidents, the SWAT team was operating under a drug warrant. In each incident, the victim was not even a suspect.

The increasingly militarized posture and armament of America's police force is largely a side effect of our nation's failed "war on drugs." When the nation's leadership declared "war," it only follows that those responsible for fighting that war—our nation's police officers—would become armed accordingly. In 1990, the National Defense Authorization Act allowed the Secretary of Defense to "transfer Federal and State agencies personal property of the Department of Defense including small arms and ammunition, that the Secretary determines is—(A) suitable for use by such agencies in counter-drug activities; and (B) excess to the needs of the Department of Defense."

This initiative, which ultimately became known as the 1033 program, transfers surplus military-grade equipment to state and local police departments free of charge. Under



the program, the government has granted body armor, mine-resistant trucks, helicopters, assault rifles, grenade launchers, night vision goggles and other military gear to hundreds of law enforcement agencies throughout the country. New Mexico police agencies alone have received 32 Mine Resistant Ambush Protected (MRAP) vehicles.

The Farmington police Commander Cliff Washburn was unusually forthright about why a town of 45,000 obtained an MRAP, telling the Farmington Daily-Times, "...It's very intimidating. You roll up in front of somebody's house with that, and it gets their attention. We'll take it everywhere we go."

You can see the troubling trend of militarized policing in New Mexico in more subtle ways than tank-like vehicles patrolling our state's hamlets. It is visible in the day-to-day interactions between the police and the people they protect and serve. Indeed, the police encounter that led to James Boyd's death in the Albuquerque foothills was a routine call for illegal camping, but the video captured of the incident shows police officers who look and act more like soldiers than police officers. They confront the lone camper in an aggressive posture, armed with body armor, helmets, long-rifles, and flash-bang grenades. By the end of the encounter, James Boyd lay dying of three gunshot wounds.

When peace officers are trained to act and react like soldiers, every member of the public becomes a potential enemy, a potential threat. Rather than officers of the peace, they become an occupying military force. But our neighborhoods are not war zones, and our police officers should not be treating us like wartime enemies. We need to return to community-based policing, where officers build ties with the people they protect and serve and work closely with members of communities to promote public safety. We need more trust, compassion, and collaboration from our police force—not more tanks in towns.

The *War Comes Home* report points out that this problem is systemic, and any reform effort must be systemic as well. The problems of overly aggressive policing are cultural and cannot be solved by merely identifying a few "bad apples" or dismissing the problem as a few isolated incidents. For the Albuquerque Police Department to lose its culture of violence, it will need to shed the tools, trappings, and tactics of violence as well.

8/30/11
Michael Marquez

1/4/12
Mark Macoldowna

3/19/12
Daniel Tillison

3/21/12
Gary Atencio

4/19/12
Dennis Aragon

6/20/12
Santiago Chavez

8/6/12
Dominick Solis-Mora

3/5/13
Parrish Dennison

3/19/13
Kendall Carroll

7/5/13
Vincent Wood

10/26/13
Christopher Chase

10/28/13
Joaquin Ortega

11/15/13
Robert Garcia, Sr.

12/1/13
Shane Sherrill

12/8/13
Andy Snider

1/9/14
Jeremy Robertson

3/16/14
James Boyd

3/25/14
Alfred Redwine

4/21/14
Mary Hawkes

5/3/14
Armand Martin

5/22/14
Ralph Chavez

7/22/14
Jeremy Robertson

New Staff

Alexandra Freedman Smith, Legal Director



After serving the affiliate for the past four years as a staff attorney, Alexandra Freedman Smith is stepping into the role of legal director, where she will lead the organization's legal efforts to protect civil liberties in New Mexico.

Maria Martinez Sanchez, Staff Attorney



Maria Martinez Sanchez was born and raised in Albuquerque, New Mexico. She attended New Mexico State University where she received a Bachelor's of Social Work and a Bachelor's of Arts in Government. After college Maria worked as a licensed social worker with the developmentally disabled population. She later attended the University of New Mexico School of Law. Prior to joining the ACLU, Maria served as a staff attorney for the New Mexico Center on Law and Poverty for six years. Maria currently serves as the board president for Encuentro, an organization that engages Latino immigrant families in educational opportunities that build skills for economic and social justice.

Legal Updates

ACLU Secures 1.1 Million Dollar Settlement for Victim of Illegal Body Cavity Search



As the U.S.-Mexico border becomes more and more militarized, it disrupts the the daily lives of regular people in the region in more and more profound ways. Harassment and intimidation by federal law enforcement agents, internal checkpoints, and roving patrols have fundamentally changed the nature of how people move about in their communities, how they do business, and how they interact with their neighbors. Just visiting loved ones and family members across the border involves passing through a level of invasive scrutiny rarely seen since the fall of the Berlin Wall. For one 54-year-old New Mexico woman, it was the beginning of a nightmare.

Her ordeal began when a K-9 unit allegedly "alerted" as she attempted to return to the U.S. from Mexico via a bridge in El Paso on her way back from visiting an old friend. CBP agents frisked and strip-searched her. Despite finding no contraband, they then transported her in handcuffs to the University Medical Center of El Paso, where doctors subjected her to an observed bowel movement, X-ray, speculum exam, rectal exam, vaginal exam, and a CT scan. After a period of six hours of fruitless searches, the agents released the plaintiff without charge. CBP never obtained a warrant.

She left the experience deeply traumatized by the cavity searches government agents forced her to endure and continues to suffer emotional and psychological after effects. Paralyzed with fear over the experience, she could barely bring herself to leave her house, couldn't maintain normal intimacy with her husband.

In December, 2013, The ACLU of New Mexico and the ACLU of Texas brought a joint lawsuit on her behalf against the Customs and Border Protection (CBP) agency and the medical center and physicians who cooperated with their directive to inflict these illegal searches on her person. In July, the University Medical Center of El Paso and emergency room physicians settled the case, paying our plaintiff \$1.1 million for their role in perpetrating the traumatic body cavity searches she suffered at the facility. The hospital has also agreed to review recent revisions to its internal policies governing law enforcement searches with ACLU lawyers.

"We are very pleased that the hospital has taken steps to alleviate the great wrong done to our client," said ACLU of New Mexico cooperating attorney Laura Schauer Ives. "We hope this settlement will stand as a powerful reminder to other doctors and medical facilities that they have the right and responsibility to refuse to carry out unjustified, unnecessary, demeaning searches on behalf of law enforcement."

The plaintiff's claims against CBP personnel for the illegal searches remain pending in federal court, and the ACLU continues to move forward with litigation against CBP to exact justice from that agency as well.

"Despite the trauma and humiliation endured by our client, she had the courage to step forward," said Rebecca L. Robertson, legal and policy director for the ACLU of Texas. "Because of her, the hospital has changed its policy to prevent this from happening to others. Now we hope that CBP will also take responsibility and stop subjecting innocent people to unconstitutional and abusive searches."

This case stands as an example of everything that is wrong about border militarization and our nation's failed "War on Drugs." The border is not a constitution-lite zone where the federal government can violate the rights of people with impunity. As we move forward with the claims against CBP, we aim to send a strong message that will reverberate across the border region and put all federal law enforcement agencies on notice that they cannot subject innocent people to this sort of horrific and illegal abuse.

Judge Rules Bloomfield 10 Commandments Monument Unconstitutional

On August 7, District Court Judge James Parker ruled that the granite monument featuring the Ten Commandments installed on the lawn of Bloomfield City Hall violated the Establishment Clause of the First Amendment, and must be removed by the city by September 10, 2014. The lawsuit was filed in 2012 by the American Civil Liberties Union (ACLU) of New Mexico on behalf of two Bloomfield residents who objected to the monument, believing it to be an unconstitutional endorsement of a particular religion.

"This decision is a victory for the First Amendment's protections against government endorsed religion," said ACLU of New Mexico Executive Director Peter Simonson. "We firmly support the right of individuals, religious groups, and



community associations to publicly display religious monuments, but the government should not be in the business of picking which sets of religious beliefs belong at city hall. We hope that the Ten Commandments monument will find a new home on private property in the city where people can continue to enjoy it.”

In its decision, the court concluded:

“...The Ten Commandments monument is government speech regulated by the Establishment Clause because the Ten Commandments monument is a permanent object located on government property and it is not part of a designated public forum open to all on equal terms...In view of the circumstances surrounding the context, history, and purpose of the Ten Commandments monument, it is clear that the City of Bloomfield has violated the Establishment Clause because its conduct in authorizing the continued display of the monument on City property had the primary or principal effect of endorsing religion.”

The religious monument was first installed on government property in July, 2011 and dedicated on July 4th with a religious themed ceremony. Former city councilor Kevin Mauzy, who originally proposed the 2007 city ordinance that allowed for the Ten Commandments monument to be displayed on the city hall lawn, presided over the dedication ceremony.

“Bloomfield residents come from many different religious traditions, and the government should never discriminate amongst them by lifting up one above the other,” said ACLU of New Mexico Legal Director Alexandra Freedman Smith. “Not only does this monument run afoul of the First Amendment, but it sends an exclusionary message to members of the community who do not subscribe to the particular set of religious beliefs inscribed there. The government belongs to us all, and it should not marginalize community members because of their faith.”

RCBR Dispatches

Compassion and Due Process Should Guide Response to Central American Migration

By Brian Erickson

The thousands of women and children arriving at the U.S.-Mexico border in South Texas after the long and treacherous journey from Central America have catapulted the border region into the midst of yet another public controversy. Pundits and policymakers are quick to characterize the influx of refugees fleeing gang violence in Central America as a ‘crisis,’ but what kind of crisis is it? After visiting the detention center in Artesia, NM where 600 of these women and children are warehoused awaiting immigration proceedings, it is hard to escape the feeling that the true nature of this ‘crisis’ may lie in the uncertain integrity of our own American values of justice and compassion.

While a variety of reasons may guide the decision to leave one’s home and move, the very real and often direct threat of sexual violence, extortion and systematic murder are common reasons cited by many of those in Artesia who left everything they knew and fled their homes. How we respond to these children and their families’ cries for help says something crucial about who we are.

The communities of Las Cruces and El Paso chose to respond to the situation with compassion, and quickly mobilized to provide shelter, food, and clothing to children and their families who were released by Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) to reunite with family elsewhere in the U.S. as they await their proceedings. The Regional Center for Border Rights (RCBR) supported community partners in both cities by providing Know Your Rights information and recording the testimonies of over 50 families who wished to report abuse.

One woman we spoke with during our recent visit to the Artesia facility fled to the U.S. with her five daughters from El Salvador after criminal gangs came to her home, held her by her neck, and extorted her with threats of unspeakable violence against her 19 year old daughter. This same group had already killed a neighbor who refused to pay and were responsible for the massacre of 27 people at the university her daughter attended.

Her story, as well as many others we’ve spoken to, illustrate the lived experience behind the noted increase of individuals seeking refuge. From 2008 to 2013, the United Nations refugee agency tracked an estimated 712% increase in asy-



lum applications from citizens of Guatemala, El Salvador and Honduras in not only the U.S., but also neighboring nations of Central America and Mexico.

Unfortunately, the immediate response from the Obama Administration has been anything but compassionate. The Administration quickly and haphazardly converted the Federal Law Enforcement Training Center (FLETC) of Artesia, NM from a training site for Border Patrol agents into a family-based detention facility. They point to this facility as a model for expedited due process for the 600 children and their mothers detained there. Preliminary reports suggest the process is far from fair or just.

After the August recess, Congress will continue debate on how to respond to President Obama’s request for funding that is heavy on family detention and border security, and light on due process. Recent polls show that 7-in-10 across political leanings agree the current situation calls for a response that treats children as refugees by offering shelter and an opportunity tell their story with due process. How we treat families should be no different.

Warehousing vulnerable children and mothers is wrong. It inhibits due process, harms physical and mental health, and damages family relationships. To ensure we don’t look back at this time with regret, Congress needs to hear from concerned citizens who understand that children and families fleeing instability, particularly the threat of extreme violence, should be met with compassion, fairness, and due process. Any other response would demonstrate that the crisis is not just humanitarian, but a crisis of our own moral fiber and capacity for compassion.

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Noah Gelb,
Legal Intern



Noah Gelb joined the ACLU of New Mexico as an intern in the legal department in June, 2014. He graduated in 2008 with a degree in philosophy and art from the University of New Mexico. Since graduation he has worked as an artist in the Albuquerque area, participating in a number of exhibitions and art shows. He has also worked as a waiter, a cook and a retail clerk. After realizing that he wanted to become an advocate for his community, Noah decided to pursue a career in law. He is currently in his second year at the UNM School of Law where he is focusing on the areas of constitutional litigation and civil rights.

Noah enjoys making art, reading and spending time with his family.

Cynthia Pompa,
RCBR Field Organizer



Cynthia Pompa joined the ACLU-NM Regional Center for Border Rights on July 2014 as the Field Organizer. She is a native to the border region who grew up in Cd. Juarez, Chih. and El Paso, TX. After graduating from St. Mary’s University in San Antonio, TX with degrees in Economics and International Relations, Cynthia served as

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NEW STAFF, CTD.

a Public Ally (AmeriCorps) at a local non-profit in San Antonio working as Community Advocate, connecting Hispanic immigrants with local and federal assistance. Afterwards, she spent a year in northern Peru as an Augustinian Volunteer working as Health Outreach Coordinator for the Diocese of Chulucanas and as a Computer Science teacher for students seeking a technical degree. After being away from the border region for more than six years, Cynthia returned to become a Program Coordinator for Border Servant Corps, managing long-term volunteers in El Paso, TX.

**Emily Hauck,
RCBR Project Coordinator**



Emily Hauck serves as the Project Coordinator for the Regional Center for Border Rights, working on outreach and giving Know Your Rights presentations. She joined the RCBR in August 2014 through the Border Servant Corps volunteer program. Emily graduated magna cum laude from Gettysburg College with a degree in Spanish Linguistics and International Affairs. She worked as the facilitator for an adult ESL class in the community and participated in meetings to educate the local migrant population on immigration reform. In January 2014 Emily traveled to the Paso del Norte region for the first time to learn about immigration on the border and instantly knew she wanted to serve in the area. This is her first post-graduate position and she is very excited to learn and grow with the ACLU. Emily enjoys reading and running, and hopes to hone her gardening and cooking abilities while living in the Southwest.

VICTORY! CBP Takes Initial Step to Remedy Excessive Force

By Brian Erickson

“Frankly, we need to be better at admitting when we’re wrong or where we’ve made a mistake.”

These were the words of recently confirmed Customs and Border Protection (CBP) Commissioner Gil R. Kerlikowske in an interview with NPR mid-July. His remarks represent a welcome shift towards transparency at an agency that has long operated with a complete lack of public accountability, violating the rights of people along the border with impunity.

The costs of this lack of accountability have been high. Since January 2010, the Regional Center for Border Rights (RCBR) has tracked at least 29 deaths as a result of the use of lethal force by CBP personnel. Among the individuals killed, 12 were U.S. citizens, seven were under the age of 21, nine were killed in response to alleged rock throwing, and six were standing on Mexican soil when Border Patrol agents discharged their firearms.

The most alarming number of all is zero. The Arizona Republic reported in December 2013 that none of the officers or agents involved in 42 deaths since February 2005 have faced any public repercussions from the agency, Department of Homeland Security, or from civil and criminal courts.

Thankfully, in May of this year CBP released a long overdue, unredacted copy of the Police Executive Research Forum (PERF) audit of the agency’s use of force policy and practice. The release of the report marked a historic step forward in transparency for the current administration and an admission of its failure to follow best law enforcement practices.

The RCBR, in collaboration with ACLU partners, played a key role in obtaining this information, brokering the first in-person meeting between border advocates and the Commissioner. The RCBR also coordinated and hand delivered a petition representing approximately 50 leading voices from faith, labor, and civil and human rights organizations from along the border, demanding release of the PERF report and a pilot program for body-worn cameras to increase agent accountability.

The PERF report was the first of several revelations into the agency’s dismal record investigation incidents involv-

ing the use of deadly force. In reviewing recent cases, the report showed that agents frequently placed themselves in harm’s way in order to justify use of deadly force rather than de-escalating situations or using less lethal options, particularly during vehicle and rock assaults.

Most concerning of all are the subsequent allegations of CBP’s former head of Internal Affairs, James F. Tomscheck, who spoke with the Center for Investigative Reporting against the wishes of CBP leadership. He reported that CBP is imbued with a culture of impunity, saying that the agency “sees itself as above reproach and ‘constitutional constraints’ and aims to shield agents’ misconduct.” He added that of the cases tracked since 2010, at least a quarter of those are “highly suspect,” and were frequently doctored by Border Patrol officials who “consistently tried to change or distort facts to make fatal shootings by agents appear to be ‘a good shot’ and cover up any wrongdoing.”



“...the agency sees itself above reproach and constitutional constraints and aims to shield agents’ misconduct.”

Alongside the PERF report, CBP also released a revised copy of its use-of-force manual that incorporates a number of recommendations made by PERF and the ACLU. This constitutes a significant policy victory for the RCBR and its partners in the Southern Border Communities Coalition. However, recent revelations demonstrate that the agency’s culture of impunity is entrenched and will require aggressive systemic changes to eradicate. The agency must implement major reforms in agent training, use-of-force incident tracking, and investigative processes. CBP must be held accountable when it uses excessive force, and the families who have lost loved ones to CBP brutality must have justice.

In light of the shocking revelations regarding CBP use of force, the Obama Administration must

take swift action and follow the lead of police departments across the country to expedite a pilot program for body-worn cameras paired with appropriate privacy protections. Although preliminary reports indicate that CBP will reopen investigations into 67 excessive force cases per the ACLU’s demands, the testimony from former agency head Tomscheck clearly shows that an external review by the Department of Justice of all deadly force incidents in the past five years is also necessary.

A transparent and independent review of these cases would go a long way to restore public confidence that the Administration and CBP leadership takes allegations of abuse seriously. CBP’s culture of impunity must end.

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