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## Brief for the Albuquerque Peace and Justice Center, Hispano Round Table De Nuevo Mexico, Los Jardines Institute, Martin Luther King Memorial Center, New Mexico Forum as Amicus Curiae for Youth in Community, New Mexico League of Latin American Citizens, New Mexico Old Lesbians Organized for Change, and Southwest Organizing Project in United States of American v. The City of Albuquerque

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**IN THE UNITED STATES DISTRICT COURT FOR  
THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA

Plaintiff,

v.

Civ. No. 1:14-cv-1025 RB-SMV

THE CITY OF ALBUQUERQUE,

Defendant.

**BRIEF OF AMICI CURIAE THE ALBUQUERQUE PEACE AND JUSTICE  
CENTER, HISPANO ROUND TABLE DE NUEVO MEXICO, LOS JARDINES  
INSTITUTE, MARTIN LUTHER KING MEMORIAL CENTER, NEW MEXICO  
FORUM FOR YOUTH IN COMMUNITY, NEW MEXICO LEAGUE OF LATIN  
AMERICAN CITIZENS, NEW MEXICO OLD LESBIANS ORGANIZED FOR  
CHANGE, AND SOUTHWEST ORGANIZING PROJECT NEITHER URGING  
APPROVAL OR DISAPPROVAL OF SETTLEMENT AGREEMENT BUT  
URGING MODIFICATIONS**

**STATEMENT OF INTEREST OF AMICI**

The Amicus Curiae are community organizations engaged in social justice work in the Albuquerque area and have been involved in the criminal justice system. Several of the organizations were actively involved in petitioning the United States Department of Justice (“DOJ”) to investigate the Albuquerque Police Department (“APD”). The Amici file this brief pursuant to the Courts Joint Proposed Order Inviting the Submission of Briefs by Amicus Curiae [Doc. 35] and to assure that all voices in the community are heard when the Court considers the Settlement Agreement between the United States Department of Justice (“DOJ”) and the City of Albuquerque (the “City”). The Amici do not urge the Court to approve or disapprove the Settlement Agreement. However, Amici point out inadequacies

in at least three key areas, and urge the Court to modify the Settlement Agreement, if approved, accordingly.

The Amici consist of the following organizations:

1. The Martin Luther King Memorial Center (“MLKMC”) is a community organization in the forefront of organizing for police accountability and oversight in Albuquerque. It organized the Martin Luther King Memorial Center Task Force and its successor the Albuquerque Coalition for Police Reform to call for action from the City of Albuquerque.

2. New Mexico League of United Latin American Citizens (LULAC) was founded in 1929, LULAC is one of the nation's oldest and largest civil rights organizations. LULAC was created in response to the rampant discrimination and denial of basic civil rights, prevalent in the Latino community.

3. SouthWest Organizing Project (SWOP) was founded in 1980 by young activists to empower our communities in the Southwest to realize racial and gender equality and social and economic justice. As a frontline, multi-issue membership organization with an explicitly anti-racist and values based agenda, SWOP is an intergenerational model and track-record working with low-income communities of color facilitate the organization's ability to reach constituencies that historically have been left out of the equation.

4. The Hispano Round Table of New Mexico (HRTNM) is a coalition of over 50 Hispano organizations and over 50,000 members statewide with thousands of Hispano/Latino youth involved in its ENLACE Programs and LULAC Young Adult programs.

5. New Mexico OLOC (Old Lesbians Organizing for Change) is a chapter of a

national network of Lesbians over age 60 working to confront injustice.

6. The Albuquerque Center for Peace and Justice is a 30 year-old organization comprised of dozens of grassroots groups working on social justice issues in our community.

7. Los Jardines Institute (The Gardens Institute) is a grassroots community organization that works on issues of racial justice.

8. The New Mexico Forum for Youth in Community promotes equal access and meaningful engagement for all youth to thrive through positive youth development, civic participation, community capacity and network building, mobilization, and policy transformation.

The Amici acknowledge the difficult and dangerous job the police perform and commend them for stepping up for their community and accepting the risks. The Amici seek to participate in this matter in order to build trust and establish a productive and positive relationship between the community and APD. The Amici believe that the issues of race and youth need to be part of the consent decree process between DOJ and APD and that the community needs an active seat at the table for the Settlement Agreement and police reforms to work properly.

## **ARGUMENT**

### **I. THE COURT SHOULD USE THE FAIRNESS HEARING TO EDUCATE THE COMMUNITY ON THE AUTHORITY GRANTED TO THE DOJ UNDER 42 USC §14141 AND ITS LIMITS**

The Department of Justice (“DOJ”) commenced an investigation of the Albuquerque Police Department (“APD”) pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141 (1994) (“Section 14141”). The statute authorizes the DOJ to seek injunctive and other equitable relief against law enforcement

agencies to prevent a pattern and practice of unconstitutional policing. Several community organizations, including some of the Amici, petitioned the DOJ over a two-year period to investigate a series of fatal shootings by APD officers. Those organizations were joined by the parents and families of several of the victims. They asked the DOJ to investigate the shootings because they believed that APD lacked accountability and oversight. The organizations asked the DOJ to investigate APD and to correct its deficiencies because they believed APD was not capable of fixing itself. They appealed to the federal government to step in and stop what the organizations had perceived as the rampant trampling of constitutional rights and criminal acts—often with fatal consequences. They appealed to the DOJ without asking it to proceed under any specific statute.

The above-reference community organizations were pleased when the DOJ completed its investigation and issued a Findings Letter, dated April 21, 2014, in which it stated it had “reasonable cause to believe that APD engages in a pattern or practice of use of excessive force, including deadly force, in violation of the Fourth Amendment and Section 14141.” Findings Letter at 1. The DOJ also found that “[a] significant amount of the force we reviewed was used against persons with mental illness and in crisis.” Further, the Findings Letter detailed several specific incidents in which the DOJ found officers had violated the constitutional rights of the deceased citizens. The community organizations were encouraged by this action, but after the release of the Settlement Agreement, activists, surviving families and organizations have directed that frustration toward the DOJ and have strongly criticized the DOJ and the Settlement Agreement. There was a prevailing sentiment that the DOJ would represent community interests in the negotiations, but that sentiment has now changed.

The Amici have heard many community members voice their profound disappointment with Settlement Agreement. First, they were baffled that the DOJ did not seek sanctions against APD or discipline of the officers identified in the Settlement Agreement in light of the findings of wrongful conduct by APD. The failure to obtain punitive measures has been a source of great frustration to surviving families and advocating organizations who saw the DOJ as a means to finally procure justice. Second, they hoped DOJ would seek the appointment of a Monitor to oversee APD rather than merely monitor compliance with the Settlement Agreement. Third, they have been particularly baffled by the failure of the Settlement Agreement to accept the findings of a pattern and practice of constitutional violations and its acceptance of the City's refusal to acknowledge that it engaged in such wrongful practices. Finally, they have questioned the transparency of the negotiations.

However, the frustrations really begin with the statutory limits of Section 14141 which authorizes injunctive and equitable relief to end the violation of constitutional rights under current policies and prevent future violations. It provides very little authority, if any, to sanction past conduct. The DOJ was simply unable under the authority of Section 14141 to provide the desired relief. Section 14141 does not prohibit prosecution under federal civil rights laws. For instance, there are other statutes that enable other units within the DOJ to determine whether prosecution should be pursued.

There is wide spread agreement on the necessity of a Monitor. Many in the community had hoped that a monitor would have broad powers and the authority to substitute its discretion for local elected and appointed officials in charge of APD. The Court's authority to appoint a Monitor with such power, however, is limited. It could only

have done so if there was substantial evidence that the City or APD was unlikely to comply with the injunctive relief or other extremely compelling circumstances. *Bell v. Wolfish*, 441 U.S. 520, 548 (1979); *Vermont Yankee Nuclear Power Co. v. Natural Resources*, 435 U.S. 519, 543-45 (1978). As to the City's refusal to admit wrongdoing, and the DOJ's willingness to enter into a Settlement Agreement without such an admission, it is possible to have a truth and reconciliation process under Section 14141, but the statute does not contemplate such a process.

Notwithstanding the perceived lack of transparency of the negotiations, the Settlement Agreement before the Court is the agreement the DOJ said it would seek in the Findings Letter. The Remedies section of the Findings Letter outlines the proposed settlement agreement. Moreover, the City and DOJ issued a Joint Statement of Principles on July 24, 2014, again setting forth the intent of the DOJ and City to reach a proposed settlement agreement on the terms provided in the Settlement Agreement before the Court. Community critics may have been less critical of the process if there had been transparency and some mechanism in which they could have raised objections directly in the context of the negotiations.

The concerns about transparency are another shortcoming of Section 14141. The statute simply does not provide a formal process or framework for community engagement or input into negotiations and the shaping of consent decrees. Although the DOJ held numerous community meetings and received over a thousand emails concerning APD and the proposed consent decree, and the City has held public forums, Section 14141 does not require that either DOJ or the City respond to those providing comments as to the disposition of those comments. The Amici believe that the level of distrust on the part of

various community groups and activists could be abated if the statute prescribed a formal community participation process like that for proposed consent decrees in antitrust cases under 5 U.S.C. §16 (this statute provides a sixty day public comment period after the filing of a proposed consent decree and requires the DOJ to develop a process for reviewing and responding to those comments).

The Amici express their gratitude to the Court for holding a fairness hearing, although the Amici regret that community voices will not be heard by the Court unless they belong to limited to organizations fortunate enough to find lawyers willing to represent them. The Amici urge the Court to open up the fairness hearing to other members of the public wishing to voice their concerns. The Amici further urge the Court, in rendering its decision, to explain to community organizations how their concerns were taken into in reaching its decision to approve or disapprove the Settlement Agreement.

**II. THE SETTLEMENT AGREEMENT HAS POSITIVE POINTS.**

Notwithstanding the limitations of Section 14141, the Settlement Agreement contains many positive points. It requires the use of on-body recordings, requires all officers to receive crisis intervention training, requires the establishment of crisis intervention teams, dismantles the Repeat Offender Unit, requires the appointment of a federal monitor, provides for the adoption of best practices, embraces a culture of community policing, and acknowledges the importance of community engagement. The overarching theme of the Settlement Agreement is the insistence that APD adopt effective polices, provide adequate training, and subject itself to sufficient oversight in order to stop and prevent the violation of constitutional rights.

The Amici view the positive points as a starting point, but because the Settlement

Agreement falls short in some key areas, the Amici do not urge this Court to approve the Settlement Agreement as it stands. On the other hand, because the Settlement Agreement provides a framework for change, the Amici also do not urge this Court to reject the Settlement Agreement. Given the needs of the community, the Amici wish to call to the attention to the Court three areas in which the Settlement Agreement falls short. These are not the only areas in which the Settlement Agreement is inadequate. The Amici believe that other amici have filed amicus briefs raising additional areas of inadequacy such as the provisions on practices involving the mentally ill and community oversight provisions.

**III. THE SETTLEMENT AGREEMENT DOES NOT ADEQUATELY COVER ISSUES OF RACE AND BIASED POLICING**

The patterns and practice of unconstitutional policing targeted by Section 14141 is not limited to Fourth Amendment violations as prescribed by the Settlement Agreement. The parties acknowledge in the Joint Motion Requesting Approval and Entry of the Settlement Agreement as an Order [Doc. 9] that Section 14141 “contains no limitation on the nature of the constitutional or federal rights that it protects.” A pattern and practice of violating the Fourteenth Amendment also falls within the scope of Section 14141. However, the Findings Letter, and consequently its proposed remedies, were silent on the issue of race and discriminatory policing. The Findings Letter indicates that the focus of its investigation was the excessive use of force in violation of the Fourth Amendment. Accordingly, the DOJ did not investigate disparities in the use of force based on race or other policing practices, traffic stops, arrests or stop and frisk practices and the Settlement Agreement does not contain a prohibition of biased policing.

The Amici acknowledge that the Settlement Agreement does contain provisions relating to race. Paragraph 215(k) provides for the collection of data in the Early Intervention

System regarding the “demographic category for each civilian involved in a use of force or search and seizure incident sufficient to assess bias.” Demographic category is defined in Paragraph 12(q) as “race, ethnicity, age, sex, gender expression or gender identity, sexual orientation, and limited English proficiency, if known.” The provision does not require the collection of demographic data on the officers involved. Moreover, the Settlement Agreement does not prescribe the consequences of a determination of bias. The definition also does not include other critical demographic categories such as socio-economic status and homelessness.

In addition, Paragraph 291 of the Settlement Agreement provides that the Civilian Police Oversight Agency shall “implement a program of community outreach aimed at soliciting community input from broad segments of the community in terms of geography, race, ethnicity and socio-economic status.” Paragraph 292 requires the agency to submit semi-annual reports that include the “demographic category of complainants” but, again, not the demographic category of the officers. Similarly, Paragraphs 129 and 137 require collection of data regarding age, race, ethnicity, gender, and crisis intervention incidents for the mentally ill.

The community organizations and activists who brought public pressure on the DOJ to investigate not only sought an investigation of excessive use of force and its use against the mentally ill, but they also raised questions about race. In 2012, Jewel Hall, President of the MLKMC, sent a letter to Senator Jeff Bingaman seeking assistance in requesting the DOJ to investigate APD. The letter included concerns about “Civil Rights violations of racial, ethnic, national origin, disabled and limited English speakers discrimination and harassment by APD”. At meetings between the DOJ and community organizations, community members raised concerns about racial discrimination as it pertains to the use of force, racial profiling practices involving interactions between the police and persons of color such as traffic stops,

arrests, and stop and frisk. The Amici believe that the Settlement Agreement should do more than merely provide for the collection of demographic data for determinations of bias in the future. There is a strong perception among many community organizations that APD engages in racially discriminatory policing. Those perceptions are based on data, newspaper stories and published studies and reports.

Albuquerque is a racially and ethnically diverse city. According to U.S. Census data, its population is 42 % White, 47% Hispanic or Latino, 5% American Indian and Alaska Native, 3.3% Black, 2% Asian, and 2% Other. Of the 41 police shootings between 2010 and July 22, 2014, nearly half may have involved Hispanics. Many activists believe Hispanics comprise a majority of those fatally shot. Approximately, 7.5% of all the shootings and 10% of the fatal shootings involved African Americans. Hispanics accounted for at least 10 of the 15 civilians in non-fatal shootings in that period. Incarceration rates for New Mexico reflect similar disparate results. African Americans and Hispanics are incarcerated at a higher rate than Whites. As recently as 2012, the American Civil Liberties Union of New Mexico settled a racial profiling case on behalf of an African American driver passing through Albuquerque in 2010. APD officers assisted federal authorities seized approximately \$17,000 in cash and refused to return it even though the driver was never charged with a crime. See, *U.S. v, \$13,000 U.S. Currency, et. al.*, 11-547 LFG/WDS. Likewise, there have been racial profiling studies of APD. In 2004, the New Mexico Human Rights Coalition issued a Survey on Racial and Ethnic Biased Policing in Albuquerque indicating that 94% of the responding citizens believed that racially biased policing and profiling occurred in Albuquerque. In the 2012 report “Bias-based Policing at a Glance: An Evaluation of Compliance with the Prohibition of Profiling Practices Act [NMSA §29-21-1 et seq.] by Aimee Villarreal, APD received a grade

of C.

The Amici urge the Court to modify the Settlement Agreement to include a provision prohibiting biased policing, and perhaps requiring training on the subject matter.

**IV. THE SETTLEMENT AGREEMENT IS INADEQUATE IN ITS LACK OF COVERAGE OF ISSUES PERTAINING TO YOUTH**

The Settlement Agreement does not refer to juveniles in its use of force policies, training, mentally ill or community engagement. Yet youth issues overlap with those of race, mental health and soci-economic status. Hispanic, African American, and Native American youth are more likely to have encounters with APD and are also detained at significantly higher rates than Whites. *See*, Bernalillo County Fiscal Year 2012 Utilization Survey, at 7. Youth under the age of 18 comprise 24 percent of the population of Albuquerque. *Id*, at 8. Hispanics comprise 56% of youth, ages 11-17 in Bernalillo County; Whites, 30%, Native Americans, 5% African Americans 4% and Asians 2%. *Id*. The data shows that 17% of Hispanics and 19% of Native Americans live in families with incomes below the poverty level compared to only 5% of White families. *Id*, at 21. The number of youth in Bernalillo County entering the criminal justice system has decreased over the past ten years due to the embrace of juvenile justice reform. *Id*, at 5. Nevertheless, youth frequently encounter police. Hispanic males are detained at more than twice the rate of any other ethnic group. *Id*, at 7.

Most minorities enter the system from three zip codes: 87105, 87108, and 87121 with significant minority populations. *Id*, at 6. Most of the youth caught up in the system have significant mental health and substance abuse issues. *Id*, at 6,17. Many youth are concerned not only with the impact of the Settlement Agreement on their interactions with APD, but they are concerned about law enforcement generally. The youth have been interested in the APD consent decree process but have not known how to participate. The Amici urge the Court to

modify the Settlement Agreement to take into account the issues relating to youth and to provide for inclusion in the community engagement process.

**V. THE SETTLEMENT AGREEMENT IS INADEQUATE IN ITS FRAMEWORK FOR COMMUNITY ENGAGEMENT**

The Amici believe that, in order to truly establish a productive, positive, and effective relationship between the community and APD, the community organizations that requested the DOJ to investigate, and others that have been involved in issues of social justice must be brought together in a collaborative process towards reform. The MLKMC Task Force on Police Reform, and its successor, the Albuquerque Coalition for Police Reform, was a coalition of several community organizations representing diverse constituents that petitioned the DOJ, including most of the Amici, from 2011 until the DOJ announced on November 12, 2012, that it was going to conduct an investigation of the excessive use of force in encounters with civilians. The coalition also contacted members of the New Mexico Congressional Delegation and met with representatives of the DOJ and U.S. Attorney's Office for the District of New Mexico. Members of the coalition were not included in the negotiation of the Settlement Agreement.

The organizations expressed concern about the use of excessive force on the mentally ill, the perceived disproportionate use of excessive use against Hispanics, vast amounts of citizen complaints, civil rights violations based on race, ethnicity, national origin, disability and limited English proficiency, unconstitutional stops, searches and arrests, failure of the city to conduct an independent review of the excessive use of force, APD training, policies and procedures that led to the escalation of violence and the use of force, recruitment and hiring practices, and the lack of an independent police review commission.

Part XII of the Settlement Agreement contains several sections on community engagement. Those provisions do not clearly provide a framework for community organizations such as the Amici to continue to collaborate or engage with the City and the DOJ to foster the implementation of the Settlement Agreement. Paragraph 266 of the Settlement Agreement provides that “[t]he City shall establish Community Policing Councils in each of the six Area Commands with volunteers from the community to facilitate regular communication and cooperation between APD and community leaders at the local level.” Paragraph 267 provides that “[i]n conjunction with community representatives, the City shall develop a mechanism to select the members of the Community Policing Councils, which shall include a representative cross-section of community members and APD officers, including, for example, representatives of social services providers and diverse neighborhoods; leaders in faith, business, or academic communities; and youth.”

These provisions do not provide for representatives from community organizations that were involved with the Martin Luther King Memorial Task Force or the Albuquerque Coalition for Police Reform, both of which included some of the Amici in this brief or other amici. The community representatives as well as the APD officers are to be selected by community representatives selected by the Mayor in a fairly closed process. Thus, community organizations are not assured of having representatives of their choosing. Subsequently, community organizations are not guaranteed the opportunity to have a voice that will be heard in much-needed collaborative discussions. The settlement agreement approved in *United States v. City of Portland*, Case No. 3:12-cv-02265-SI, in contrast, provided for a Community Oversight Advisory Board with 15 voting and 5 advisory members. Portland Settlement Agreement, ¶144. Five community voting members were to

be selected nominees proposed by neighborhood coalitions, but any nonprofit organization in the city could propose a nominee, and the selection of the community members was to take place in a public meeting. Portland Settlement Agreement, ¶ 145.

It is important to note, the Settlement Agreement has another provision on community engagement that opens the door to real inclusiveness. Paragraph 254, the opening paragraph of Part XII on Community Engagement and Oversight provides that “APD shall promote the sustainability of reforms by supporting strong community participation and creating formal and informal mechanisms that facilitate ongoing and constructive communication between APD and the many communities that make up Albuquerque.” Paragraph 254 provides further that “APD shall take an active role in generating broad community support and mutual respect with the diverse communities it serves by adopting greater transparency, forming problem-solving and goal-oriented partnerships.”

Paragraph 254 provides framework for inclusion in a collaborative process with organizations such as the Amici. A collaborative framework with organizations and stakeholders invested in reform has proven to be an essential ingredient for successful police reform beginning with Cincinnati in 2001. Some or all of the Amici seek an active seat at the table with other community organizations in access to the Monitor and in partnering with the City to assure compliance with the Settlement Agreement.

Modifying the Settlement Agreement to provide a structured role for community organizations actively engaged in racial justice and police reform can provide a meaningful avenue to address the inadequacies raised by the Amici in this brief. Such inclusion will undoubtedly further the successful implementation of the Settlement Agreement and reduce the tension and improve the relationship between the community and APD.

**VI. THE COURT SHOULD ONLY APPROVE A MONITOR WHO IS FAMILIAR WITH POLICING IN THE RACIALLY AND CULTURALLY DIVERSE COMMUNITIES OF ALBUQUERQUE**

The Independent Monitor or Monitoring Team is essential to the success of the Settlement Agreement if the Court approves it. The Amici urge the Court to approve a monitoring team that is diverse, includes law enforcement experience, police reform experience, legal experience with police oversight, crisis intervention for the mentally ill and homeless populations, familiarity with policing in a city with a substantial Hispanic population, a significant Native American population, and relatively small African American and Asian populations. The community is counting on the monitor to assure compliance with the Settlement Agreement. Accordingly, the Monitor needs access to APD and should not only be independent, but also should be cloaked in the appearance of independence. Careful consideration should be given to the location of office and community's access to it. Finally, the Amici urge the Court to hold a public hearing on the approval of the Independent Monitor or monitoring team (For a discussion on the perceived distrust from the community when they are not involved in selecting a monitor and the benefits of involving "community stakeholders" in the process of selecting a monitor, see Eugene Kim, *Vindicating Civil Rights Under 42 U.S.C. §14141: Guidance from Procedures in Complex Litigation*, 29 *Hastings Const. L. Q.* 767, 786-794 (2002)).

**CONCLUSION**

The Amici do not urge the Court to approve or reject the Settlement Agreement. Instead, the Amici request that the Court modify the Settlement Agreement or urge the parties to make appropriate modifications if the Court approves the Settlement Agreement.

Respectfully Submitted:

/s/ Leon Howard, 1.14.15

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**Certificate of Service**

I hereby certify that on the 14<sup>th</sup> day of January 2015, I filed the foregoing electronically through the CM/ECF system, which caused all parties entitled to notice to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

/s/ Leon Howard 1/14/15  
Leon Howard