



C. Ray Drew, Executive Director • Mark Silverstein, Legal Director

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Thomas E. Perez
Assistant Attorney General
Civil Rights Division
United States Department of Justice
950 Pennsylvania Ave. NW, Washington, D.C. 20530
By email to tom.perez@usdoj.gov

Jonathan Smith, Section Chief
Special Litigation Section
United States Department of Justice
950 Pennsylvania Avenue, NW, PHB
Washington, D.C. 20530
By email to Jonathan.smith2@usdoj.gov

Dear Mr. Perez and Mr. Smith:

I write on behalf of the Greater Metro Denver Ministerial Alliance; the Denver Branch NAACP; the family of Rev. Marvin L. Booker; the family's attorneys, Killmer Lane & Newman, LLP; and the American Civil Liberties Union of Colorado. We call on the Department of Justice to exercise its power, pursuant to 42 U.S.C. § 14141, to investigate a pattern and practice of police misconduct and civil rights violations by Denver law enforcement.

In the City and County of Denver, law enforcement consists of the Denver Sheriff's Department and the Denver Police Department. Overseeing both departments is the Denver Manager of Safety.

Misconduct and civil rights violations by Denver law enforcement has repeatedly been the subject of complaints, media headlines and exposés, civil rights lawsuits, settlements, and community outrage. The number and frequency of allegations of serious misconduct—along with community concern—appears to be increasing dramatically.

On July 9, 2010, Rev. Marvin L. Booker was a prisoner in the intake area of the Denver jail. He died as he was being restrained by multiple Sheriff's deputies who applied a carotid artery "chokehold" and subsequently knelt on his back as he was forced to lay face down. The coroner declared the death a homicide. The public had long awaited the results of Denver's internal investigation. On Monday May 13, Denver authorities announced that the Sheriff's deputies violated no policies and would not be subject to discipline.

This decision, that a homicide carried out by Sheriff's deputies carries no consequences, that Denver's policies allow Sheriff's deputies to take a prisoner's life, has fueled the already-burning outrage in the communities policed by Denver law enforcement, especially among communities of color. Many see the death of Rev. Booker, and Denver's decision that no policies were violated, as the culmination of a long series of incidents in which Denver authorities have tolerated, acquiesced in, or ignored serious allegations of law enforcement misconduct. The community no longer trusts Denver law enforcement authorities to investigate themselves. For that reason, we call on the Department of Justice to investigate the long-enduring pattern and practice of police misconduct in Denver.

The following numbered paragraphs provide summaries of some of the numerous incidents of police misconduct that cry out for an independent federal investigation. The paragraphs numbered 1-39, including the footnotes, are reproduced verbatim from paragraphs 66-104 of the very thorough pattern-and-practice section of the Complaint filed by the attorneys for the Booker family on February 24, 2011, except that some supplemental information, including relevant case numbers, has been added in brackets.

Paragraphs 40-54 summarize additional information and incidents that confirm the need for a pattern and practice investigation.

Incidents detailed in *Estate of Marvin L. Booker v. City and County of Denver*¹

1. In 2008, the City of Denver and Denver Health paid a combined \$7 million to the family of Emily Rae Rice, who had died while in custody of the Denver Sheriff's Department. Ms. Rice had alleged that the City's treatment of her after she was detained violated her constitutional rights leading directly to her death. It was alleged that the City had destroyed or otherwise tampered with video and other evidence, and had engaged in a cover-up of the wrongdoing. After initially denying any liability on any of the claims, the Defendants paid \$7 million and agreed to many policy changes. Defendant Faun Gomez was a Defendant in both the present case and the case brought on behalf of Emily Rice. Upon information and belief, Defendant Gomez received no disciplinary action for her role in either the death of Emily Rice or the death of Marvin Booker. [Case No. 07-cv-01571, United States District Court, District of Colorado.]

2. Also in 2008, Denver paid \$150,000 to Timothy Thomason, who was deprived of medical care while in the city jail.² Mr. Thomason was arrested on charges of cultivating marijuana. While being transported to jail, he informed the officers that he was suffering from terminal Stage IV non-Hodgkin lymphoma, and that he was taking massive amounts of pain killers and anxiety medications. The

¹ [Estate of Booker v. City and County of Denver, Case No. 11-cv-00645, United States District Court, District of Colorado, ¶¶ 66-104, Doc. No.1, Complaint.]

² Michael Roberts, *The City Council pays out to Timothy Thomason*, WESTWORD, Aug. 19, 2008, available at http://blogs.westword.com/latestword/2008/08/the_city_council_pays_out_to_t.php.

officers assured him that they would bring his medications to the jail. Once he arrived at the Pre-Arrestment Detention Facility, however, his repeated pleas for medication were ignored. A judge ordered his release, but he was forced to spend several more hours in jail, without his medication, until he suffered a seizure, banging his head on the cement floor of his cell. Mr. Thomason alleged that his treatment by the Denver Sheriff's Department violated his constitutional rights.³ [Case No. 07-cv-01715, United States District Court, District of Colorado.]

3. In 2004, Denver paid the family of Paul Child \$1.32 million to settle a lawsuit brought after Mr. Childs, a developmentally disabled 15 year-old boy, was fatally shot by Denver Police Officer James Turney.⁴ Officer Turney responded to a 911 call from Mr. Childs' sister, and when he arrived at the house, Mr. Childs was holding a knife. When Mr. Childs refused to drop the knife, Officer Turney shot and killed him. Two other officers were in the house with non-lethal tasers, which were not used. Mr. Childs' mother informed officers that he was a "special needs" child, but they nonetheless shot him from the front door while he was standing in the hallway.⁵

4. In 2004, Denver paid Terrill Johnson \$75,000 to settle a lawsuit against the City, Denver Police Chief Gerald Whitman, and Denver Police Officers Troy Ortega, Louis A. Estrada, Perry Speelman, Richard Eberharter, Randy Yoder, and Danny Perez. Mr. Johnson alleged that as he was driving home from his job at Denver International Airport, he noticed he was being followed closely by a Denver Police patrol car. The officers in the car followed him to his residence. He went into his home, and when he went back outside to take out the garbage, the officers, still in their patrol car, were shining a spotlight into his car, which he had parked in front of the house. As the officers reversed the patrol car, they slammed into Mr. Johnson's wife's car. Mr. Johnson approached his wife's car to inspect the damage, and the officers exited the patrol car with their weapons drawn. They instructed Mr. Johnson, who was not armed, to throw down his weapon. Additional officers arrived at the scene, continuing to instruct Mr. Johnson to drop his weapon. He removed his shirt and raised his hands into the air to show the officers that he was not armed. The officers then rushed toward Mr. Johnson, slammed him onto a patrol car, punched him, forcibly subdued him while handcuffing him, and threw him into the patrol car, using racial slurs the entire time. Mr. Johnson was charged with two minor traffic

³ Alan Prendergast, *Pain Management: Cancer patient Tim Thomason didn't think he could feel any worse. His Denver jailers showed him that he could.*, WESTWORD, July 31, 2008, available at <http://www.westword.com/2008-07-31/news/pain-management/>.

⁴ Christopher N. Osher, *Denver has spent nearly \$6.2 million since 2004 to settle suits against police*, DENVER POST, Sept. 15, 2010, available at http://www.denverpost.com/news/ci_16076344.

⁵ John C. Ensslin & Hector Gutierrez, *Slain teen 'loved' cops*, ROCKY MOUNTAIN NEWS, July 8, 2003, <http://m.rockymountainnews.com/news/2003/Jul/08/slain-teen-loved-cops/>.

offenses and interference; all charges against him were dropped. [Case No. 04-cv-00715, United States District Court, District of Colorado.]

5. On February 25, 2004, Regina Keith filed a lawsuit on behalf of the estate of Gregory Lee Smith, Jr. against the City and County of Denver, Denver Police Chief Gerald Whitman, Denver Police Officers Robert Silvas and Jim Turney, and unknown John Doe Officers. Ms. Keith, Mr. Smith's mother, alleged that the officers arrived at her home after she called 911 for assistance with a domestic dispute. When they arrived, Mr. Smith was in his bedroom. Mr. Smith then exited his bedroom with a three-inch utility knife. The officers ordered him to drop the knife, and when he didn't, they fatally shot him. Upon information and belief, the individual officers settled the case for an unknown amount. [Case No. 04-cv-00200, United States District Court, District of Colorado]

6. On December 6, 2004, Richard Rra-Shada filed a lawsuit against the City and County of Denver, Denver Police Officers Dennis Bedenbender and Shanna Michael, and Robert A. Kaser. Mr. Rra-Shada alleged that Officer Bedenbender struck him with his police vehicle. When Mr. Rra-Shada responded with a profanity, Officer Bedenbender got out of his police vehicle, approached Mr. Rra-Shada, and clipped his legs from underneath him, causing him to fall head-first onto the pavement. Officer Michael then hit Mr. Rra-Shada with her nightstick and kicked him repeatedly in his torso. At the same time, Officer Bedenbender was punching Mr. Rra-Shada in the head with closed fists. Mr. Rra-Shada's injuries included head and brain trauma, as well as injuries to his shoulder, wrist, back, ribcage, and abdomen. He also began suffering seizures after the incident. Upon information and belief, the case was settled for an unknown amount. [Case No. 04-cv-02505, United States District Court, District of Colorado.]

7. On July 1, 2005, Jeffrey R. Mayton filed a lawsuit against the City and County of Denver and Denver Police Officers Josh E. Valerio, Gerard Alarcon, and Robert J. Wycoff. Mr. Mayton alleged that he was wrongfully arrested, and that during his arrest, the officers ignored his complaints that he was ill. When Mr. Mayton began to struggle due to physical discomfort from his illness, the officers used excessive force against him, resulting in a dislocated shoulder, abrasions, and bruising. Because the officers ignored Mr. Mayton's complaints about his illness, he defecated in his clothing and was forced to remain sitting and lying on the ground in pain until transport arrived. Upon information and belief, the case was settled for an unknown amount. [Case No. 05-cv-01036, United States District Court, District of Colorado.]

8. On August 5, 2005, Quincy Michael Shannon filed a lawsuit against the City and County of Denver, Denver Mayor John Hickenlooper, and Denver Police Officers Thomas McKibben and Chan Thanong. Mr. Shannon alleged that, while he and three friends were waiting in their car in a parking lot, they were approached by an officer who told them they could wait five more minutes for their friends to come out of a nightclub, and then they would have to move their car. Another officer then approached the car and told them to move. The driver attempted to move the car, but

the parking lot was full of cars. A third officer then approached the car and sprayed mace or pepper spray into the driver's face. The driver tried again to move the car, but was unable to. Another officer then approached and sprayed the other occupants of the car with mace or pepper spray. All of the passengers then exited the car, which was filling up with fumes from the spray. Mr. Shannon asked Officer McKibben how they were supposed to move the vehicle when the parking lot was full, and in response Officer McKibben sprayed him in the face again. Mr. Shannon then walked away and dialed 911 to report the incident. Officer McKibben overheard Mr. Shannon describing him on the phone and sprayed him again. When Mr. Shannon turned away, Officer McKibben grabbed Mr. Shannon's arm and bent it behind him. Officer McKibben then kicked Mr. Shannon's feet out from under him and shoved his face into the pavement. Officer McKibben then grabbed both of Mr. Shannon's arms and one leg, handcuffing his hands behind his back over his ankle. Officers McKibben and Officer Thanong then picked Mr. Shannon up and sprayed him in the face again. Mr. Shannon suffered cuts and scrapes to his face, resulting in a permanent scar. Upon information and belief, the case was settled for an unknown amount. [Case No. 05-cv-01496, United States District Court, District of Colorado.]

9. On March 31, 2002, Mary Milham was at a Denver bar called Sing Sing, located in the LoDo section of downtown Denver. As Ms. Milham was leaving she made a remark about a particularly obnoxious bouncer to her brother. While talking to her brother, she was confronted with off-duty Denver Police Officers in police uniforms, one being Defendant Danny Perez, #95032. Ms. Milham was not being violent or threatening in any way when one of the officers grabbed Ms. Milham's wrist and applied a "low profile twist lock" on her and snapped her humerus like a twig while propelling her into a brick wall. This brutal assault caused extensive injuries to Ms. Milham as well as significant physical and psychological trauma. These officers then proceeded to file false charges against her knowing that she had committed no offense. All charges against Ms. Milham were dismissed in Denver County Court on August 14, 2002. A jury in federal court found Perez to be liable to Milham for violating her constitutional rights and using excessive force and damages were awarded. Despite this finding, Denver took no disciplinary action against Perez. [Court of Colorado, Case No. 03-cv-00702, United States District Court, District of Colorado.]

10. On November 21, 2005, David Nettles filed a lawsuit against the City and County of Denver, Denver Police Chief Gerald Whitman, and Denver Police Officers Carlette Havard, Michael Nuanes, Jr., Damian Naranjo, and Zachary Phillips. Mr. Nettles alleged that the officers, while responding to a domestic violence call across the street from Mr. Nettles's house, decided to apprehend Mr. Nettles. In effectuating the unlawful arrest of Mr. Nettles, one of the officers began punching him in the ribs, while another used nunchucks on Mr. Nettles's ankle, causing him to fall to the ground. While Mr. Nettles was on the ground, another officer kicked him in the head at least three times. One or more officers jumped onto Mr. Nettles's back, yelling, "when we give you an order, you obey it!" Another officer began punching Mr. Nettles in the back of the head, yelling, "you did it to your own damn self!" While the officers were attempting to handcuff Mr. Nettles's

hands behind his back, he heard his shoulder snap. After he was handcuffed, the officers continued hitting him in the head and kicking him in the back. Mr. Nettles's injuries included a severe shoulder injury and bruising to his ribs, arms, left elbow, and knees. Upon information and belief, the case was settled for an unknown amount. [Case No. 05-cv-02360, United States District Court, District of Colorado.]

11. On January 6, 2006, Francisco Juan Lobato, Anthony Lobato, Barbara Lobato, and Ramona Lobato filed a lawsuit on behalf of the estate of Frank Lobato against the City and County of Denver, Denver Police Chief Gerald Whitman, and Denver Police Officers Ranjan Ford, Jr., Joshua Herrick, Gene Sharla, Robert Shiller, Charles Kyle, Steven Addison, and unidentified John and Jane Doe Officers. The Lobatos alleged that the Defendant Officers entered the Lobato home without a warrant looking for a suspect. Frank Lobato was sleeping in his bed at the time the officers entered the home. When the officers were unable to locate the suspect, they entered Mr. Lobato's bedroom and shot and killed him. Denver paid \$900,000 in 2007 to settle the lawsuit.⁶ [Case No. 05-cv-01437, United States District Court, District of Colorado.]

12. On April 3, 2006, Hirut Berhanmeskel filed a lawsuit against the City and County of Denver and Denver Police Officer Gilberto Romero. Ms. Berhanmeskel alleged that, while she was attempting to resolve a parking ticket dispute at the Denver Parking Ticket Referee's office, she was approached by Officer Romero. Officer Romero, apparently upset that Ms. Berhanmeskel was crying about her inability to resolve her parking ticket issue, grabbed Ms. Berhanmeskel's arm violently and roughly twisted it behind her back. He slammed her against the wall and handcuffed her without even warning her that he was placing her under arrest. Ms. Berhanmeskel suffered a broken wrist as a result of the excessive force used by Officer Romero. Upon information and belief, the case was settled for an unknown amount. [Case No. 06-cv-00610, United States District Court, District of Colorado.]

13. On August 11, 2006, Chandler Lyles filed a lawsuit against the City and County of Denver and Denver Police Officer Ryan Burke. Mr. Lyles alleged that Officer Burke came to his home to investigate a claim that Mr. Lyles's mother was suicidal. Officer Burke ordered Mr. Lyles to sit on a sofa in the living room, and Mr. Lyles complied. Then, without provocation or warning, Officer Burke tackled Mr. Lyles, forcing him to the ground and handcuffing him. As a result of the excessive force used by Officer Burke, Mr. Lyles suffered injuries that included a broken right clavicle. Upon information and belief, the case was settled for an unknown amount. [Case No. 06-cv-01604, United States District Court, District of Colorado.]

14. In 2007, Amy Shroff sued the City of Denver and Officer Frank Spellman for violating her rights protected by the Fourth and Fourteenth Amendments to the Constitution. Officer Spellman illegally arrested Ms. Shroff after

⁶ Christopher N. Osher, *Denver has spent nearly \$6.2 million since 2004 to settle suits against police*, DENVER POST, Sept. 15, 2010, available at http://www.denverpost.com/news/ci_16076344.

she had complained to the police about her former husband's presence at a bar immediately before he was to have visitation rights with their young child under a custody arrangement that provided for her to drop the child off at the Denver Police station for pick-up by the former husband. Officer Spellman arrested Ms. Shroff allegedly for violating a restraining order, even though the order clearly restrained the *husband* from coming near her, not the other way around. The district court rejected Spellman's effort to have the case dismissed on summary judgment, and the 10th Circuit Court of Appeals agreed that Spellman's conduct, as alleged, would violate the clearly established rights of Ms. Shroff to be free from unreasonable searches and seizures. The Defendants settled the case before trial in 2010 for a payment of \$175,000 to Ms. Shroff. [Case No. 07-cv-01466, United States District Court, District of Colorado.]

15. On June 12, 2007, Ross Edward Smith filed a lawsuit against the City and County of Denver and Denver Police Officers Jarrod Tinnin and Mark Sutton. Mr. Smith alleged that while he was walking down the 16th Street Mall as part of a protest against the Iraq war, he was approached by Officer Tinnin. Officer Tinnin had dismounted his motorcycle, and walked up to Mr. Smith and punched him in the face with a closed fist, throwing him to the pavement. Officer Sutton then joined Officer Tinnin in tackling and beating Mr. Smith. Officer Tinnin pushed Mr. Smith's face into the pavement while Officer Sutton kneeled on Mr. Smith. Mr. Smith was charged with interference, but all charges against him were dropped. As a result of the excessive force used against him, Mr. Smith suffered injuries and abrasions to his face, arms, hands, neck, and back, and aggravation of his Parkinson's Disease, causing severe and uncontrollable tremors. Upon information and belief, the case was settled for an unknown amount. [Case No. 07-cv-01233, United States District Court, District of Colorado.]

16. On June 27, 2007, Grace Arlene Mosley filed a lawsuit against the City and County of Denver and Denver Police Officers Martin Martinez, Jose Hurtado, and unknown John Doe Officers. Ms. Mosley alleged that she was unlawfully arrested and forcefully pulled out of her home by the officers. As a result of the excessive force against her, she suffered physical pain and emotional trauma. Upon information and belief, the case was settled for an unknown amount. [Case No. 07-cv-01354, United States District Court, District of Colorado.]

17. In 2008, Denver paid \$885,000 to settle a lawsuit brought in response to an incident in which Denver Police Officers Charles Porter, Luis Rivera, and Cameron Moerman used excessive force against Juan Vasquez, a 16 year-old boy. Mr. Vasquez was severely injured with a lacerated liver and broken ribs after one of the officers used a fence as leverage to jump up and down on the boy's back while he

lay prone on the pavement.⁷ [Case No. 08-cv-01196, United States District Court, District of Colorado.]

18. On November 13, 2008, Michael P. Marotta filed a complaint against the City and County of Denver, the Denver Police Department, and Denver Police Officers Cortez, Black, and Rocco-McKeel. Mr. Marotta's complaint arose out of two separate incidents with Denver Police Officers. In March 2007, Officer Cortez issued Mr. Marotta a summons for Disturbing the Peace for using the stairwells in his condominium building for exercise. When Officer Cortez was unable to serve Mr. Marotta, he obtained an arrest warrant. Officer Cortez then entered Mr. Marotta's condominium, pulling Mr. Marotta out and placing him under arrest. Mr. Marotta was locked out of his home without his hearing aid or glasses while his condominium was searched. In November 2007, Officer Rocco-McKeel came to Mr. Marotta's home, grabbing him and throwing him against a wall to effect an arrest. Mr. Marotta was handcuffed so tightly that he has a permanent scar on his wrist, and the officer shoved Mr. Marotta against an elevator wall without provocation while removing him from his building. The case is currently awaiting trial in federal court. [Case No. 08-02421, United States District Court, District Court of Colorado.]

19. In January 2009, Denver paid \$100,000 to Trudy Trout to settle a lawsuit that arose out of Denver Police Officer Nicholas Rocco-McKee's use of excessive force. Officer Rocco-McKee shoved Ms. Trout to the ground, causing her to break her wrist. Despite the fact that the encounter was caught on video, Officer Rocco-McKee lied on his report, stating that Ms. Trout tripped over her own high heeled shoes, which she was not wearing. Upon information and belief, Officer Rocco-McKee was not disciplined for the use of force or for lying on his report.⁸ [Case No. 09-cv-00039, United States District Court, District of Colorado.]

20. On February 25, 2009, Nick Lynch filed a lawsuit against Denver Police Officers Adam Barrot, Abigail Dorn, J. Kennedy, and unknown John Doe Officers. Mr. Lynch alleged that, as he was approaching the officers with his hands raised, the officers struck him and threw him to the ground, face down. The officers then hit him repeatedly with a nightstick or a flashlight, causing permanent injuries. The case is currently awaiting trial in federal court. [Case No. 09-cv-00405, United States District Court, District of Colorado.]

21. On April 30, 2009, John Stephen Heaney filed a lawsuit against the City and County of Denver and Denver Police Officers James Costigan, Michael Cordova, Noel Ikeda, Luke Palmitere, and Daniel Steele. Mr. Heaney alleged that, while he was riding his bicycle near Coors Field on opening day of the baseball season, he was attacked by undercover police officers, who did not identify

⁷ David Packman, *Is There a Police Brutality Problem in Denver?*, INJUSTICE EVERYWHERE: THE NATIONAL POLICE MISCONDUCT STATISTICS AND REPORTING PROJECT, Sept. 6, 2010, <http://www.injusticeeverywhere.com/?p=3028>.

⁸*Id.*

themselves as law enforcement agents. He was placed into a chokehold and forcibly brought to the ground, where he was punched in the head repeatedly. One of the officers grabbed him by the hair and slammed his face into the pavement, breaking two of his teeth.⁹ As a result of the excessive force used against him, Mr. Heaney also suffered severe bruising on his hands, knees, arms, and legs, as well as other injuries requiring surgery. The case is currently awaiting trial in federal court. [Case No. 09-cv-01006, United States District Court, District of Colorado.]

22. On May 4, 2009, Jason Anthony Graber filed a lawsuit against the City and County of Denver and Denver Police Officers Miller, Davis, and two other unknown John Doe Officers. Mr. Graber alleged that, as he was crossing the 16th Street Mall at Market Street, a police officer in a marked car yelled out his window, “dumbass!” The police car then pulled up next to Mr. Graber, his brother, and his wife, and asked if they needed assistance. Mr. Graber responded that they did not need assistance, but that he did not appreciate being called a dumbass. The officers then exited their vehicle and one of them tackled Mr. Graber from behind. He was grabbed by the neck, and his legs were kicked out from under him. He fell down, slamming his knee and elbow onto the concrete. Mr. Graber was arrested for public intoxication, but a breathalyzer test showed a blood alcohol content of 0.036, well below the legal limit, and he was released. X-rays to Mr. Graber’s leg showed lipohearthrosis and a possible hairline fracture. Mr. Graber remained in a leg brace for many months after the incident. The case is currently awaiting trial in federal court. [Case No. 09-cv-01029, United States District Court, District of Colorado.]

23. On May 15, 2009, Altagracia Medina Valencia filed a lawsuit on behalf of her deceased husband against the City and County of Denver, Denver Police Chief Gerry Whitman, and eight unknown John Doe Denver Police Officers. Ms. Valencia alleged that, while her husband, Odiceo Valencia-Lopez, was attending his daughter’s communion, he suffered a self-inflicted knife wound to the wrist. When his family called for an ambulance, the call was routed to Denver Police. Eight officers arrived on the scene. Mr. Valencia-Lopez was standing by his vehicle with the knife in his hand when he was surrounded by six to eight officers with their weapons drawn. The officers ordered Mr. Valencia-Lopez to drop the knife, but due to his lack of understanding of English, blood loss, and intoxication, he did not understand their commands. An officer then tased Mr. Valencia-Lopez, causing him to drop the knife. After Mr. Valencia-Lopez was tased and dropped the knife, the other officers began shooting him. He was shot approximately seven times, in front of his entire family. He died at the scene. Upon information and belief, the case was settled for an unknown amount. [Case No. 09-cv-01130, United States District Court, District of Colorado.]

24. On October 16, 2009, Wayne C. Rose filed a lawsuit against the City and County of Denver, Denver Police Chief Gerald R. Whitman, Detective Mark S.

⁹ [To view video footage of this incident, see Jeffrey Wolf, “Videotape shows man beaten by Denver Police,” 9 News, Aug. 12, 2008, available at <http://www.9news.com/news/story.aspx?storyid=97466&catid=222>.]

Woodward, and unidentified John Doe Police Officers. Mr. Rose alleged that, while fleeing police unarmed, he was knocked to the ground by an officer on foot and then run over by an officer on a police motorcycle. The impact of the motorcycle knocked Mr. Rose unconscious, and Detective Woodward then handcuffed Mr. Rose's hands behind his back. Detective Woodward then picked Mr. Rose up by his arms and dropped him onto the pavement two or three times, causing his face and body to strike the pavement several times. Officer Woodward and the unidentified John Doe Officers then beat and kicked Mr. Rose repeatedly. Mr. Rose's injuries resulting from the officers' use of excessive force included a broken arm that required multiple surgeries. Upon information and belief, the case was settled for an unknown amount. [Case No. 09-cv-01498; United States District Court, District of Colorado.]

25. On June 30, 2009, James R. Watkins filed a lawsuit against the City and County of Denver and Denver Police Officers John Ruddy and Randy Penn. Mr. Watkins alleged when he noticed he was being followed by the officers, he reached for his cell phone while asking them if they were going to beat him up. The officers responded by lunging toward Mr. Watkins and hitting him in the face with their closed fists and elbows. They continued beating him after he was on the ground and under police control. Mr. Watkins had to be taken by ambulance to Denver Health Medical Center because he was bleeding profusely as a result of the officers' use of excessive force. He was initially charged with Assault in the Second Degree, but all charges against him were dropped. Denver paid Mr. Watkins \$20,000 to settle the lawsuit.¹⁰ [Case No. 09-cv-01534, United States District Court, District of Colorado.]

26. On June 30, 2009, Michael DeHerrera filed a lawsuit against the City and County of Denver and Denver Police Officers Devin Sparks, A. Jaramillo, and R. Murr. Mr. DeHerrera alleged that, while he was using his cell phone to inform his father, a Pueblo police officer, that the Denver Police Officers were assaulting his friend, the officers assaulted him. Officer Sparks used an arm bar takedown to force Mr. DeHerrera face first onto the sidewalk. Once Mr. DeHerrera was on the ground, Officer Sparks used a sap impact weapon repeatedly on Mr. DeHerrera's body, and other officers struck him in the face multiple times. Mr. DeHerrera had to be taken to the hospital by ambulance, and his injuries included head trauma and facial contusions. This incident was captured on video. Despite the aggravated circumstances, the officers were only very lightly disciplined. Since the case has received considerable publicity and public protest, the Denver Police Department has reopened an internal affairs investigation into the incident, which resulted in a \$17,500 settlement.¹¹ [Case No. 09-cv-01535, United States District Court, District of Colorado.]

¹⁰ David Packman, *Is There a Police Brutality Problem in Denver?*, INJUSTICE EVERYWHERE: THE NATIONAL POLICE MISCONDUCT STATISTICS AND REPORTING PROJECT, Sept. 6, 2010, <http://www.injusticeeverywhere.com/?p=3028>.

¹¹ Christopher N. Osher, *Denver has spent nearly \$6.2 million since 2004 to settle suits against police*, DENVER POST, Sept. 15, 2010, available at http://www.denverpost.com/news/ci_16076344.

27. On June 30, 2009, Shawn Kyeone Johnson filed a lawsuit against the City and County of Denver and Denver Police Officers Devin Sparks, A. Jaramillo, and R. Murr. Mr. Johnson was involved in the altercation with Denver Police that resulted in Mr. DeHerrera's lawsuit. Mr. Johnson alleged that, as he was being assaulted by a club bouncer, three Denver Police Officers joined in the assault, striking him in the face with elbows and closed fists even after he was under police control. Mr. Johnson suffered severe injuries, including head trauma and facial contusions, and was taken by ambulance to the hospital. In August 2010, Denver settled the case for \$15,500.¹² [Case No. 09-cv-01536, United States District Court, District of Colorado.]

28. On August 7, 2009, James B. Bouchard filed a lawsuit against the City and County of Denver and Denver Police Officers M. Whetstone and K. Jiminez. Mr. Bouchard alleged that the officers arrived at his house in response to a call by Mr. Bouchard's former girlfriend, who wanted to retrieve her personal belongings from his house. When Mr. Bouchard refused to allow the officers to enter his home without a warrant, the officers forced their way in and used a nightstick to restrain Mr. Bouchard in his own home. He was then shoved into a wall and handcuffed. Mr. Bouchard's resulting injuries included a torn rotator cuff and bruises, contusions, and other injuries to his upper torso, face, and head. The case is currently awaiting trial in federal court. [Case No. 09-cv-01884, United States District Court, District of Colorado.]

29. On August 10, 2009, Danvis Smith filed a lawsuit against the City and County of Denver, Denver Police Chief Gerald Whitman, Denver Manager of Safety Alvin LaCabe, and Denver Police Officer Joseph P. Flynn. Mr. Smith alleged that he was involved in an altercation with Officer Flynn, who was working on foot in the Denver International Airport parking garage. Officer Flynn reached through the driver's side window and struck Mr. Smith in the mouth with his elbow. Officer Flynn then pulled Mr. Smith out of the car by his right arm and handcuffed Mr. Smith in an awkward position, with his arms lifted high in the air beyond the normal range of motion. Mr. Smith was charged with assault, but all charges against him were subsequently dropped. Mr. Smith's injuries included a torn rotator cuff, a torn biceps tendon, and chronic back pain. Upon information and belief, the case was settled for an unknown amount. [Case No. 09-cv-01896, United States District Court, District of Colorado.]

30. In September 2009, Denver settled a wrongful death lawsuit for \$225,000 to the family of Alberto Romero, who died after being repeatedly tasered and beaten with impact weapons by police when he was arrested wearing only boxer

¹² David Packman, *Is There a Police Brutality Problem in Denver?*, INJUSTICE EVERYWHERE: THE NATIONAL POLICE MISCONDUCT STATISTICS AND REPORTING PROJECT, Sept. 6, 2010, <http://www.injusticeeverywhere.com/?p=3028>.

shorts. Before he died, Mr. Romero suffered eight broken ribs and had his tongue split open from the use of excessive force.¹³

31. On December 29, 2009, Vicki Lynn Trujillo filed a lawsuit on behalf of the Estate of Jason Gomez against the City and County of Denver, Denver Police Chief Gerald Whitman, and Denver Police Officer Timothy Campbell. Ms. Trujillo alleged that Officer Campbell began pursuing Mr. Gomez without reasonable suspicion or probable cause. When Officer Campbell confronted Mr. Gomez, he ordered Mr. Gomez to kneel on the ground and pointed his gun at him. Officer Campbell repeatedly shouted that he was going to kill Mr. Gomez. When Mr. Gomez, who was unarmed, stood up and began running from Officer Campbell, Officer Campbell shot him in the back. The bullet perforated Mr. Gomez's spinal column. Officer Campbell then fired a second round of shots, hitting Mr. Gomez twice in the chest, once in the abdomen, once in the right thigh, and once in the left knee. Mr. Gomez died from multiple gunshot wounds. The case is currently awaiting trial in federal court. [Case No. 09-cv-3011, United States District Court, District of Colorado.]

32. On March 19, 2010, James D. Moore filed a lawsuit against the City and County of Denver and Denver Police Officers Shawn Miller and John Robledo. Mr. Moore alleged that Officers Miller and Robledo arrived at his apartment complex in response to a 9-1-1 call from his neighbor reporting a noise coming from Mr. Moore's apartment. When the officers arrived, Mr. Moore and his girlfriend were standing outside of his apartment. After instructing Mr. Moore, whose hands were not in his pockets, to remove his hands from his pockets, the officers tackled Mr. Moore from behind and struck him on the head without provocation or warning. While he was on the ground, Mr. Moore was beaten so brutally that he lost consciousness and his heart stopped. CPR had to be administered to save his life. The beating continued even after Mr. Moore was restrained, despite his repeated insistence that the officers had "the wrong guy." Mr. Moore suffered debilitating injuries as a result of his assault. He had to undergo back surgery and months of physical rehabilitation, and he now walks with a cane and cannot stand up for more than ten minutes without having to sit or lie down due to pain. The case is currently awaiting trial in federal court. [Case No. 10-cv-00651, United States District Court, District of Colorado.]

33. In May 2010, Denver settled a lawsuit filed by Eric Winfield for \$40,000. Mr. Winfield alleged that he was severely beaten by Denver Police Officers Antonio Milow, Thomas Johnston, and Glen Martin while he was making his way through LoDo crowds after a 2007 World Series game. Mr. Winfield's injuries

¹³ [Christopher N. Osher, *Denver City Council may settle brutality case*, DENVER POST, Sept. 21, 2009, available at http://www.denverpost.com/news/ci_13383347.]

included chipped teeth, permanent scars, and nerve damage in his hands.¹⁴ [Case No. 08-cv-02405, United States District Court, District of Colorado.]

34. On July 1, 2010, Robert Duran filed a lawsuit against the City and County of Denver and Denver Sheriff's Deputy Steven Koehler. Mr. Duran alleged that, while he was waiting unescorted next to an elevator in the Denver County Jail as directed, Deputy Koehler approached him. Without warning or provocation, Deputy Koehler slammed Mr. Duran into the elevator wall. Deputy Koehler then dragged Mr. Duran approximately ten feet down the hallway. While Mr. Duran was handcuffed, Deputy Koehler kicked him all over his body and face. Mr. Duran was taken to the hospital by ambulance. Mr. Duran's injuries included scalp lacerations, bruised ribs, chest contusions, and closed head injury. The case is currently awaiting trial in federal court. [Case No. 10-cv-01569, United States District Court, District of Colorado.]

35. In August 2010, Denver paid Chad Forte \$22,500 to settle a lawsuit resulting from Denver Police Officer Kenneth Johnson's use of excessive force. After Mr. Forte allegedly jaywalked, Officer Johnson followed him into his apartment building and jumped him from behind, leaving him with facial injuries.¹⁵ [Case No. 10-cv-00998, United States District Court, District of Colorado.]

36. On September 20, 2010, Rohit Mukherjee filed a lawsuit against Denver Police Officer Abbegayle Dorn and two unknown John Doe Denver Police Officers. Mr. Mukherjee alleged that Denver Police Officers knocked on his door while he was hosting a party in his apartment. One of the officers asked Mr. Mukherjee to step outside. When he refused, one of the officers pushed his way into the apartment and Officer Dorn pinned Mr. Mukherjee against the door and choked him. When Mr. Mukherjee informed the officers that he could not breathe, one of them threw him to the ground, face first. One of the officers stood on Mr. Mukherjee's ankle and rocked back and forth. Once Mr. Mukherjee was restrained, the officers pushed him face first on the carpeted floor, causing contusions to his face. Mr. Mukherjee's guests then began recording the use of excessive force with their cell phones, at which point Officer Dorn took the cell phones without permission and placed them in a bowl of water in the kitchen in order to destroy the photographic and video evidence of the police behavior. While Mr. Mukherjee was still restrained, the other officers stepped on and kned Mr. Mukherjee's face and bent his fingers backwards as far as they could without breaking them. While escorting Mr. Mukherjee out of his apartment, the officers slammed his head into the hallways walls and the elevator wall. Mr. Mukherjee's injuries included jaw injuries, bruises, hand

¹⁴Alan Prendergast, *Eric Winfield: Artist beaten by Denver cops gets cash, no apology*, WESTWORD, May 4, 2010, http://blogs.westword.com/latestword/2010/05/eric_winfield_artist_beaten_by.php.

¹⁵David Packman, *Is There a Police Brutality Problem in Denver?*, INJUSTICE EVERYWHERE: THE NATIONAL POLICE MISCONDUCT STATISTICS AND REPORTING PROJECT, Sept. 6, 2010, <http://www.injusticeeverywhere.com/?p=3028>.

and knee pain, lacerations, knee contusion, hand sprain, and nerve damage. The case is currently awaiting trial in federal court. [Case No. 10-cv-02304, United States District Court , District of Colorado.]

37. On November 23, 2010, Jared Lunn filed a lawsuit against the City and County of Denver, Denver Police Officer Eric Sellers, and unknown Denver Police Officer John Doe. Mr. Lunn alleged that after he attempted to report an assault to Officer Sellers, which Officer Sellers ignored, Officer Sellers assaulted him. Mr. Lunn was attempting to get into his friend's vehicle when he muttered, "way to protect and serve," in response to Officer Sellers' refusal to take his assault report seriously. Officer Sellers then wrapped his arm around Mr. Lunn's neck to pull him out of the car. Officer Sellers placed Mr. Lunn in a carotid compression hold. After Mr. Lunn went limp, Officer Sellers kicked his legs out from under him and threw him to the ground. After handcuffing Mr. Lunn, Officer Sellers got within inches of Mr. Lunn's face and yelled homophobic epithets at him. Officers Sellers then released Mr. Lunn without citing him for violation of any law and allowed him to go home. The case is currently awaiting trial in federal court. [Case No. 10-cv-02998, United States District Court , District of Colorado.]

38. On January 12, 2011, Daniel Martinez, Jr., Nathan Martinez, Daniel Martinez III, and Jonathan Martinez (collectively, "the Martinez Family") filed a lawsuit against the City and County of Denver, Denver Police Chief Gerald Whitman, and Denver Police Officers Jason Valdez, Robert Martinez, Robert Motyka, and Bryce Jackson. The Martinez Family alleged that the officers began pounding on their door shortly after 11:00 pm, demanding that they open the door. When Daniel Martinez, Jr. opened the door slightly, the officers rushed into the house without consent or a warrant. Officer Valdez slammed Jonathan Martinez's head through a window and then pulled him outside of the house and slammed him onto the concrete to apply handcuffs. Officer Martinez pushed Daniel Martinez into the living room, pinned him against the sofa, and applied handcuffs. Officer Motyka punched Nathan Martinez in the face without any provocation. Officer Jackson forcefully dragged Daniel Martinez III from the house and slammed him into the concrete before applying handcuffs. All of the Martinez Family members were criminally charged. A jury acquitted Nathan Martinez and Daniel Martinez III on all charges. All of the charges against Daniel Martinez, Jr. and Jonathan Martinez were dropped. The case is currently awaiting trial in federal court. [Case No. 11-cv-00102, United States District Court, District of Colorado.]

39. On January 11, 2011, Alexander Landau filed a lawsuit against the City and County of Denver, Denver Police Chief Gerald Whitman, and Denver Police Officers Randy Murr, Ricky Nixon, and Tiffany Middleton. Mr. Landau alleged that he was assaulted during a traffic stop. Mr. Landau was driving with Addison Hunold when he was pulled over. Mr. Landau did not have his wallet, so he could not provide any identifying information to the officers. He exited the car as instructed. Mr. Hunold informed the officers that he had a small amount of marijuana and he was placed in handcuffs. The officers began searching Mr. Landau's car. When they tried to open the trunk, Mr. Landau asked if they had a warrant authorizing a search

of the trunk. Two of the officers then grabbed each of Mr. Landau's arms, and a third officer punched him in the face with no provocation. One of the officers then yelled that Mr. Landau was going for a gun, even though he was not, and the officers continued to beat him in the face and head with their fists, a radio, and a flashlight. Racist epithets were spewed at Mr. Landau, who is African American. More officers arrived on the scene and joined the assault. Officer Murr pointed his gun at Mr. Landau's head and threatened to shoot him. Paramedics arriving on the scene documented that Mr. Landau was found lying prone on the curbside, handcuffed behind his back, bleeding from the head, with lacerations and in acute distress. Mr. Landau was transported by ambulance to the hospital, where he was treated for a broken nose, lacerations, and serious closed head injuries, including a large hematoma, a concussion, and a hemorrhage in his right eye.¹⁶ [Case No. 11-cv-00080, United States District Court, District of Colorado.]

Additional incidents confirming the need for an investigation of Denver law enforcement

40. According to media accounts, on March 16, 2010, video cameras caught two Denver police officers using force on Mark Ashford simply because he was taking photographs of police activity. Mr. Ashford was walking his dogs when he witnessed the Denver police pull over a driver purportedly for going through a stop sign. Mr. Ashford reportedly knocked on the driver's door and offered to testify that the driver had come to a complete stop at the traffic sign. As the officers turned their focus to Mr. Ashford, he began taking photos of the scene. The video shows two officers apparently attempting to wrestle the camera out of Mr. Ashford's hand, pushing, grabbing, and attempting to punch him to the ground. The officers charged Mr. Ashford with interference and resistance. Those charges were dismissed. Mr. Ashford was transported from the scene by ambulance and filed an excessive force complaint with the Denver Police Department.¹⁷

Additional media accounts have highlighted several repeat civil rights violators within the ranks of Denver law enforcement, which are summarized below. As the summaries suggest, the City and County of Denver has allowed such repeat offenders to operate with impunity, often meting out little or no punishment for serious violations of constitutional rights. Such tepid responses to law enforcement misconduct appears to foster a culture of lawlessness and abuse within Denver law enforcement.

41. According to media accounts, on June 30, 2010, a Denver District Court Judge found that DPD detective Paul Baca had included "false statements" in a warrant supporting the arrest of Aaron Puller. Specifically, the judge found that Baca had lied about the testimony of two people in order to place Mr. Puller at the scene of a series of

¹⁶ [Denver settled Mr. Landau's claims for \$795,000. "Denver Pays \$795,000 To Settle Brutality Allegations," CBSDenver.com, May 3, 2011, available at <http://denver.cbslocal.com/2011/05/03/denver-pays-795000-to-settle-brutality-allegations/>.]

¹⁷ See, e.g., Kieran Nicholson, *Another Alleged Beating Involving Denver Police Surfaces*, DENVER POST, Aug. 18, 2010, available at http://www.denverpost.com/news/ci_15816360.

downtown racial muggings. The Judge found that Baca's sworn statement in his affidavit constituted "reckless disregard for the truth," and he dismissed the criminal charges against Mr. Puller. According to the media account, in a case against one of Mr. Puller's co-defendants, Rasheed Turner, Baca allegedly urged a victim to falsely claim he had his tooth broken during an attack. Criminal charges against Mr. Turner were also dismissed.¹⁸

42. According to media accounts, Denver police officer Michael Morelock was the subject of an internal investigation into 21 allegations of excessive force against him over a period of two years. Denver allegedly opened this investigation in February of 2010 after Morelock was arrested on a DUI charge.¹⁹ At least one of the excessive force complaints against Morelock became a federal lawsuit filed in June 2010. The suit is currently pending in the U.S. District Court of Colorado, Case No. 10-CV-01431-PAB-MEH. In the suit, Officer Morelock is accused of beating Tyler Mustard without justification during an arrest for alleged vandalism, and then lying when he reported that the suspect hit him so hard that he nearly blacked out. The alleged victim suffered head injuries and a collapsed lung from being beaten with a flashlight. The lawsuit alleges that hours before Mustard was beaten, Morelock had been questioned by internal affairs regarding his use of excessive force against another alleged victim, Alonzo Barrett. Mr. Barrett allegedly told police that Officer Morelock beat him with a billy club and then smashed his own cruiser window in an attempt to justify the beating. Additionally, according to media accounts, in October 2009, Officer Morelock, along with three fellow officers, became the subject of a different excessive force complaint, in which Nick Lynch alleged that three DPD officers beat him while arresting him on suspicion that he was involved in a fight in the Lower Downtown area. Officer Morelock – who allegedly witnessed the arrest – refused to identify the arresting offending officers.²⁰

43. According to a lawsuit filed in 2009, two months before Denver police officer Eric Sellers was alleged to have assaulted Jared Lunn (detailed above in paragraph 37) Sellers and three other DPD officers followed 17-year-old John Crespin home after the boy witnessed the officers using excessive force on a group of kids. The lawsuit, Case No. 09-cv-00427, is currently pending in the United States District Court, District of Colorado. According to a media account, witnesses saw the officers, including Sellers, kick John Crespin's legs out from under him, put him in a chokehold, cuff him, and then beat him for 15-20 minutes with police batons.²¹ According to a report by Denver's Office of the Independent Monitor, after an internal investigation, the DPD found that Sellers, at least with regard to Jared Lunn, had engaged in excessive force and had lied to internal affairs in an attempt to cover up his misconduct. Yet, the Denver chose to suspend Sellers for forty-days, rather than terminate him, in opposition to the

¹⁸ See Kirk Mitchell, *Denver Judge Tosses Case in Alleged Racial Mugging*, DENVER POST, June 30, 2010, available at http://www.denverpost.com/frontpage/ci_15405726?source=pkg.

¹⁹ See Felisa Cardona, *Denver Police Officer Suspended During Excessive-force Investigation*, DENVER POST, June 28, 2010, available at http://www.denverpost.com/news/ci_15391080.

²⁰ See *id.*

²¹ April M. Washington, *Denver Police Probe Alleged Beating by Four Officers*, Rocky Mountain News, Jan. 29, 2009, available at <http://www.rockymountainnews.com/news/2009/jan/29/denver-police-probe-alleged-beating-by-four/>.

recommendation of Denver's Independent Monitor, Richard Rosenthal. In his 2011 First Quarter Report, Rosenthal decried Denver's imposition of a suspension, rather than termination, stating:

Even though Manager Perea concluded that the involved officer had used force without any appropriate cause or authority, lied to Internal Affairs, verbally abused the complainant and attempted to cover up his conduct by failing to notify a supervisor or prepare a required report, he declined to terminate the officer's employment with the Denver Police Department."²²

Rosenthal concluded that Denver's disciplinary decision related to Sellers was "unreasonable" and had "the potential to cause significant and permanent harm to the department and the community."²³

44. According to media accounts, on July 12, 2009, DPD officers Ricky Nixon and Kevin Devine were caught on tape beating several women to the ground with billy clubs and then macing one or more women when they were already subdued. In the investigation that followed, the police officers lied in order to cover up their misdeeds. It took almost two years for Denver to fire these officers for their misconduct, and Denver did so over the objection of DPD Police Chief Gerald Whitman, who recommended a thirty-day suspension for Nixon and a fourteen day suspension for Divine.²⁴ Nixon was one of the DPD officers alleged to have beat Alex Landau in January 2009, and then to have lied to internal affairs to cover up his misconduct. *See paragraph 39, above.*

45. According to Denver's Independent Monitor, Richard Rosenthal, on July 15, 2010, one week after the homicide of Marvin L. Booker in the Denver jail, Denver sheriff captain Cheryl Arabalo "falsely represented to a supervisor that s/he had completed a review, as ordered by the supervisor, to ensure that 'rounds' at the Denver County Jail were being conducted and documents to the [appropriate] database."²⁵ According to Rosenthal, Arabalo failed to perform the requested review and "lied to Internal Affairs and [Denver Sheriff's] Department Command Staff during a pre-disciplinary hearing when the Captain [falsely] insisted that a review of the database had, in fact, been conducted."²⁶ Denver suspended Arabalo for seventy days, but refused to demote her, even though Monitor Rosenthal strongly recommended demotion. In his 2011 First Quarter Report, Rosenthal stated:

²² See Denver Office of the Independent Monitor, "Police and Sheriff Discipline and Critical Incident Report," First Quarter 2011, Appendix A-1, available at http://www.denvergov.org/Portals/374/documents/1Q2011_OIM_Quarterly_Report-Final.pdf.

²³ *Id.*

²⁴ See, e.g. Brian Maass, "2 More Denver Police Officers Fired," April 11, 2011, Denver CBS, available at <http://denver.cbslocal.com/2011/04/11/two-more-denver-police-officers-fired/>.

²⁵ See Denver Office of the Independent Monitor, "Police and Sheriff Discipline and Critical Incident Report," First Quarter 2011, Appendix B-1, available at http://www.denvergov.org/Portals/374/documents/1Q2011_OIM_Quarterly_Report-Final.pdf.

²⁶ *Id.*

The Monitor does not understand how, after intentionally and deliberately lying to a supervisor, to Internal Affairs and at a Pre-Disciplinary Hearing (conducted by the Director of Corrections), this employee could be allowed to remain in the essential command position of a captain or even a supervisory position as a Sergeant. The Monitor is concerned that by allowing the subject officer to remain in a command position, the Department sends the wrong message about the importance of honesty and integrity in relationship to leadership positions within the Department.²⁷

Additional incidents from the cases and files of the Colorado ACLU

From legal cases and investigations of requests for legal assistance, the ACLU of Colorado has information about yet additional incidents of Denver law enforcement misconduct that has resulted in violations of constitutional rights.

46. On March 29, 2011, Jose Sanchez and Joshinna Carreras filed a lawsuit against Denver and six police officers. Case No. 11-cv-00780, United States District Court, District of Colorado. The lawsuit asserts that Denver police targeted plaintiff Jose Sanchez unjustifiably while he was standing lawfully on the public sidewalk outside the home of his girlfriend, Joshinna Carreras. The lawsuit alleges that police illegally detained and handcuffed Mr. Sanchez, falsely accused him of being an “illegal immigrant,” and falsely arrested him on a bogus charge of providing “false identification.” The supposedly “false” identification was a current and valid photo ID card issued by the Department of Homeland Security verifying Mr. Sanchez’s legal presence and authorization to work in the United States. Mr. Sanchez spent five days in jail on the bogus charge before it was dismissed. In the course of “investigating” Mr. Sanchez, police illegally barged into the home of Ms. Carreras when they knew she was alone and taking a shower. Police demanded that she exit the bathroom as they conducted an illegal warrantless search, rifling through cabinets, drawers, and Ms. Carreras’s purse.

47. In February 2009, two African-American Denver residents, Ashford Wortham and Cornelius Campbell, complained to the DPD’s Internal Affairs Bureau (IAB) that they were stopped for no reason, searched without cause, taunted with racial epithets and other verbal abuse, and finally released after Mr. Wortham received a groundless citation for three minor traffic charges. Although the DPD concluded that the racial profiling complaint was “not substantiated,” a Denver County Court judge who heard testimony about the incident reached the opposite conclusion. After a bench trial in which Mr. Campbell rebutted the testimony of Sergeant Perry Speelman, the ranking officer at the traffic stop, the court dismissed the traffic charges. Judge Aileen Ortiz-White concluded that the “Police conduct was extreme, profane and racially motivated.”²⁸ The Court further explained that Wortham and Campbell were “unlawfully detained for an unreasonable time and without reasonable suspicion.” When Wortham

²⁷ *Id.*

²⁸ The full text of Judge Ortiz-White’s ruling is available at http://aclu-co.org/sites/default/files/Wortham.Exhibit_D.pdf

and Campbell asked for a copy of the IAB file documenting the investigation of their complaint, they were told that the officers' right of privacy trumped their right to disclosure. The ACLU sued on their behalf and successfully obtained the documents. Case No. 2010-CV-3032, Denver District Court. In February, 2011, Campbell and Wortham filed suit against Denver and the three officers, Sgt. Perry Speelman, Jesse Campion, and Tab Davis, for violation of their constitutional rights. The lawsuit is pending. Case No. 11-cv-00773, United States District Court, District of Colorado.

Denver law enforcement has repeatedly carried out what have been called "mistaken identity arrests."²⁹ In these cases, law enforcement has a warrant or probable cause to arrest a particular person, but officers instead arrest and/or jail a different (innocent) person. The following paragraphs provide details about some of the "mistaken identity" arrests and detentions that have come to the attention of the Colorado ACLU, and that have revealed the pattern and practice by Denver law enforcement of unjustifiably arresting and jailing innocent people.

48. In the summer of 2007, Bradley Braxton was unjustifiably held prisoner for 8 days by the Denver Sheriff's Department on a warrant for an obviously different person. Braxton is African-American; he was held on a warrant for a Caucasian man who had a different name. In the course of an internal affairs investigation into Braxton's "mistaken identity" arrest, a DSD deputy stated that "similar things happen every day" in the DSD.³⁰ Mr. Braxton sued Denver and several individual Sheriff's deputies. Case No. 07-cv-2672, United States District Court, District of Colorado. Denver settled the case for \$30,000.³¹

49. On February 12, 2007, Valerie Rodriguez sued Officer Timothy Scudder, asserting that he violated the Fourth Amendment by obtaining a groundless warrant for her arrest on the basis of an affidavit containing false statements and critical omissions. Case No. 07-CV-00303, United States District Court, District of Colorado. As a result of Officer Scudder's action, Ms. Rodriguez, who had no criminal record and had never been arrested—was falsely arrested and jailed for an incident with which she had no connection whatsoever. After her release, Ms. Rodriguez wrote to Mayor Hickenlooper. She explained that she had been unable to determine to whom she should direct a complaint about her "mistaken identity" arrest. She asked Mayor

²⁹ See, e.g., Sarah Langbein, "Behind Bars by Mistake," Rocky Mountain News, July 7, 2008, available at <http://m.rockymountainnews.com/news/2008/jul/07/behind-bars-by-mistake/>; Channel 7 News, "Why Are Hundreds Of Coloradans Wrongly Arrested?," Feb. 20, 2006, available at <http://www.thedenverchannel.com/7newsinvestigates/7263019/detail.html>; Stephanie Chen, "Officer, you've got the wrong person," CNN, Feb. 15, 2010, available at http://articles.cnn.com/2010-02-15/justice/colorado.mistaken.identity.arrest_1_arrest-police-aclu?s=PM:CRIME; Susan Greene, *Wrong folks still jailed? Go figure*, DENVER POST, Jan. 24, 2010, available at http://www.denverpost.com/news/ci_14256402?source=bb;

³⁰ The ACLU of Colorado has obtained a copy of the file of the Internal Affairs Investigation of the "mistaken identity arrest" of Mr. Braxton.

³¹ Daniel J. Chacón, "Mix-up might cost city \$30,000; Council to decide whether to settle suit in false arrest," Rocky Mountain News, March 28, 2008; Daniel J. Chacón, "Council takes care of uniform order, wrongful arrest payout," Rocky Mountain News, April 2, 2008.

Hickenlooper to investigate. No internal investigation was opened, however, until a Channel 7 investigative reporter made inquiries several months later. In July, 2007, Denver paid a monetary settlement on Officer Scudder's behalf and agreed to change certain policies relating to preparation of warrants.³²

50. ACLU of Colorado client Christina Ann FourHorn was snatched from her Sterling home on a year-old arrest warrant obtained, unjustifiably, by Denver detective Mark Dalvit. Dalvit investigated an assault and robbery in Denver. Witnesses accused the victim's girlfriend of three weeks, who was identified as Christin Fourhorn, 160 pounds, born April, 1980, tattooed, and who was reportedly returning to her home in Oklahoma. Dalvit ran the name through the Colorado driver's license database and found the ACLU's innocent client. Although the computer showed she was 90 pounds heavier and seven years older than the suspect, Dalvit obtained a warrant for Christina's arrest, on the basis of an affidavit falsely stating that she was the person the witnesses identified. A Denver police department spokesperson later defended Dalvit's methodology as one that "followed our procedures."³³ Christina spent five terrifying days in jail and nearly lost her job as a result of the erroneously-obtained warrant. Ms. FourHorn wrote to the Denver Police Department about the misconduct of Denver police officers. She received no response and no internal investigation was opened. In 2008, however, after both the Denver Post and the Rocky Mountain News asked Denver officials about Ms. FourHorn's ordeal, an internal investigation was finally opened. On August 11, 2008, Ms. FourHorn sued Denver and Detective Dalvit. Case No. 08-CV-1693, United States District Court, District of Colorado. Denver settled her claim for \$65,000.

51. ACLU client Muse Jama was in his home, studying for a college exam, when two Denver police officers falsely arrested him, without probable cause, under a warrant for a different person, whose name was Ahmed Alia. Muse spent 8 days in Denver jails, booked under the name "Ahmed Alia," before he was released on bail. Denver law enforcement officers denied Muse his right to appear before a judge, and they repeatedly refused to investigate obvious red flags—and Muse's complaints—that he was not the person named in the warrant. After his release on bail in fall 2007, Mr. Jama attempted to file a complaint with the Denver Police Department about his "mistaken identity" arrest. He was told he could not file a complaint. When Denver Post reporter Susan Greene made inquiries in spring 2008, however, the DPD finally opened an internal investigation of Mr. Jama's "mistaken identity" arrest. On August 11, 2008, Mr. Jama sued Denver and Detectives Curt Peterson and John Bishop. Case No. 08-CV-1693, United States District Court, District of Colorado. The case is still pending.

52. A Denver Sheriff's Department deputy, Alan Sirhal, concluded erroneously that ACLU client Jose Ernesto Ibarra was someone else: a person with a different name, different physical description, and different date of birth who was the

³² http://oldsite.aclu-co.org/news/pressrelease/release_rodriguez_settlement_07_19_07.htm

³³ Susan Greene, *Gigantic nightmare finally ends*, DENVER POST, March 20, 2008, available at http://oldsite.aclu-co.org/docket/200719/200719_description.html.

subject of outstanding arrest warrants for traffic violations.³⁴ As a result, Mr. Ibarra spent 26 days in custody. He was denied the right to a prompt court appearance, and Sheriff deputies repeatedly refused to investigate obvious red flags that he was not the person named in the warrants, including the complaints of Mr. Ibarra and his family and their offers to provide documentary proof. Even after Denver courts determined that Mr. Ibarra was not the wanted suspect, Denver Sheriff's deputies still refused to release him unless Mr. Ibarra's family paid a traffic fine owed by the suspect. Mr. Ibarra's wife reluctantly paid the \$274 fine in order to secure her husband's release. On August 11, 2008, Mr. Ibarra sued Denver and Deputy Sirhal. Case No. 08-CV-1693, United States District Court, District of Colorado. The case is still pending.

53. Denver police officers erroneously arrested ACLU client Samuel Powell Moore four separate times under an outstanding Aurora warrant for a different person.³⁵ Each time, the Aurora Municipal Court quickly determined that the ACLU's client was not the person named in the warrant. The most recent of those "mistaken identity" arrests was last November, 3 years after the suspect sought in the warrant, William Douglas Pipkin, had died. After that fourth arrest without probable cause, Mr. Moore spent 8 days in Denver's jail, without an opportunity to appear in court and without any judicial review of the officers' erroneous determination that he was the person named in the Aurora warrant. On August 11, 2008, Mr. Moore sued Denver and Officers Choice Johnson and Andrew Richmond. Case No. 08-CV-1693, United States District Court, District of Colorado. Denver settled for \$25,000.

54. ACLU client Antonio Carlos Sanchez has been held by the Denver Sheriff's Department at least four separate times on a warrants for a different person, whose name is Tony Sanchez. Antonio Carlos Sanchez has a different name, different fingerprints, a different birthdate, a different social security number, a different DPD number, and numerous other differences from the criminal suspect Tony Sanchez.³⁶ On one of those occasions, Denver Sheriff's deputies mistakenly held Antonio Carlos Sanchez in the Denver jail for almost four months on the basis of the warrant for Tony Sanchez.³⁷ On April 27, 2009, the federal district court accepted for filing Mr. Sanchez's Complaint in Intervention in the ACLU's pending case challenging other "mistaken identity" arrests or detentions carried out by Denver law enforcement. Doc. No. 154, Case No. 08-cv-01693, United States District Court, District of Colorado. The case remains pending.

Common sense dictates that the incidents of reported abuse detailed in this letter account for only a small portion of the actual abuse that the people of Denver suffer at the hands of Denver law enforcement. We believe these incidents alone, however, provide ample

³⁴ Susan Greene, *Lock 'em up, throw away ID*, DENVER POST, April 13, 2008, available at http://www.denverpost.com/ci_8906018.

³⁵ Susan Greene, *Locked into cops' mistakes*, DENVER POST, May 31, 2008, available at http://www.denverpost.com/headlines/ci_9434222.

³⁶ Letter from Mark Silverstein to Denver City Attorney David Fine, Jan. 21, 2009, available at <http://oldsite.aclu-co.org/docket/200719/fine.aclu.sanchez.1-21-09.pdf>.

³⁷ Susan Greene, *Mistaken that identity errors fixed* DENVER POST, January 25, 2009, available at http://www.denverpost.com/greene/ci_11548610.

evidence that something has gone terribly wrong with Denver law enforcement. They warrant an investigation by the United States Department of Justice into this pattern and practice of civil rights violations by law enforcement in our city.

Sincerely,

A handwritten signature in cursive script that reads "Mark Silverstein".

Mark Silverstein
Legal Director, ACLU of Colorado