



## People Organized in Defense of Earth and her Resources

November 7, 2005

Ms. Merrily Friedlander  
Chief  
Civil Rights Division  
950 Pennsylvania Avenue NW  
Washington, DC 20530

Re: Title VI Complaint about Discriminatory Practices and the Withholding of Federal Monies to The City of Austin (City) and the City's Police Department (APD)

Ms. Friedlander:

PODER (People Organized in Defense of Earth and her Resources), pursuant to the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. § 14141), Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d) the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. § 3789d), and the Fourth and Fourteenth Amendments to the United States Constitution, on behalf of Latinos and African Americans, members of PODER in Austin, Texas, represented by the undersigned, respectfully file this complaint, seeking the withholding of federal monies to the City of Austin and its police department:

### 1. STATEMENT OF INTEREST

PODER works to create a safe and healthy environment within our own communities and support the efforts of others to do so in communities around the country and the world. PODER works collectively to address social and economic justice issues as basic human rights.

### II. STATEMENT OF FACTS

#### A. Overview

There is a pervasive and historically driven pattern of excessive force, too many deaths, and an abuse of search powers in the City of Austin at the hands of the Austin Police Department (APD). It is imperative that the Department of Justice investigate the systematic police abuse and misconduct that has plagued the Latino<sup>a</sup> and African American communities in Austin, for the safety, well being, and welfare of these communities.

Since the arrival of Chief Stan Knee in 1997, there has been fourteen deaths between 1998 and 2005. The fourteenth death occurred while PODER was working on filing this complaint. Only one individual was Anglo and armed at the time, while the other two Latino and eleven African American victims were unarmed.<sup>1</sup> What APD claimed to be coincidence can now be clearly defined as a pattern.

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<sup>a</sup> Instead of using the term Hispanic we will be using the term Latino for this document.

This pattern of unnecessary killings by the police has inflicted a deep wound on the Latino and African American communities in Austin. The wound that marks the continuing racial divide in Austin has grown, even to the point of garnering national attention.<sup>2</sup>

During the past few years, as a result of abusive police power, the relationship between APD and Austin's communities of color has been strained and polarized beyond what already was a tenuous relationship. There is an overwhelming feeling of doubt, and even fear, when officials claim more will be done to stop the abuse and violence waged by APD against Latinos and African Americans.<sup>3</sup>

The police misconduct and violence suffered by communities of color stretches back decades and has created a profound lack of trust between Latinos and African Americans with APD. A police force that has lost its credibility within its community has failed, and a police force that operates outside the bounds of the law and the Federal Constitution must be restrained.

In response to the growing racial tension and an acknowledgement of the tension, Austin Police Chief Stan Knee publicly stated that he would resign by September 2004 if the relationship between APD and the community did not improve.<sup>4</sup> Two additional people of color have been killed by police since Chief Knee made his statement to resign - there has been no improvement. There has been numerous protest, rallies, testimonies and public outcry about the excessive force being used by police against people of color and Chief Knee's inability to lead.

This racially defined gap is evident in the actions of civil rights organizations, neighborhood groups and people of color that question the integrity and unlawful discriminatory and sometimes lethal practices of APD. On June 16, 2005 a public hearing was held at Dove Springs Recreation Center, 5801 Ainez Drive, Austin, Texas regarding the shooting death of Daniel Rocha. Over 300 people representing grassroots organizations, civil right groups, and area residents attended the hearing. East Austin residents demanded answers from the City and police and called for the resignation of Chief Stan Knee. Hundreds of people wanted to know why Officer Julie Schroeder shot Daniel Rocha in the back and at close range and why she didn't use her taser gun. In October 2003, APD adopted a more specific policy requiring officers to record all traffic and pedestrian stops with installed video cameras. The community was informed that Officer Schroeder did not activate the video camera. Community members have doubts as to whether the tape was discarded or erased. The focus of the community meeting was the unnecessary and excessive force, and even deaths, by police officers against people of color.<sup>5</sup>

Police misconduct against the people of color encompasses more than unnecessary deaths and excessive force. The police also have a systematic practice of abusing their search powers to harass individuals in the Latino and African American communities.

As of January 1, 2002, Texas law requires police agencies that regularly engage in traffic and

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<sup>1</sup> Erik Rodriguez, "The Escalation to Fatal Force," *Austin American Statesman*, Jan. 26, 2004, available at 2004 WL 57653718. ;APD News Releases, July 12, 2005, September 26, 2005

<sup>2</sup> Karin Brulliard, "Police Shootings Shake Austin," *Washington Post*, May 19, 2004, available at 2004 WL 74488664

<sup>3</sup> Akwasi Evans, "Tolerance Training," *Nokoa*, May 13, 2004

<sup>4</sup> Erik Rodriguez, "Austin Police Chief Gives Himself a Deadline," *Austin American Statesman*, Jan.28, 2004 available at 2004 WL 57653864.

<sup>5</sup> Melissa Ludwig, "Congregations Take Concerns to the Streets," *Austin American Statesman*, Feb.22, 2004, available at 2004 WL 57655129.

pedestrian stops to collect and report annually race data on stops and searches. This data served as the basis of several studies that all came to the same conclusion: the treatment of Latinos and African Americans by APD is substantially different from its treatment of the Anglo, majority community.

The City of Austin is recipient of federal funds, and, in fact, upon information and belief, receives a significant amount of federal funding for its police department, the amount for fiscal year 2003 being approximately \$3.19 million. The amount of federal funding almost tripled to approximately \$8.6 million for fiscal year 2004.

### **A. Systemic Police Misconduct**

#### 1. Findings by *Austin American Statesman*

- Police brutality against Latinos and African American persons in Austin is not merely anecdotal. The *Austin American Statesman*, Austin's daily newspaper, published a four-part, front-page investigative series highlighting alarming statistics about police brutality in Austin, focused on the marked racial disparity of the individuals involved in these incidents.
- The statistics show a pattern and practice of excessive use of force that disproportionately affects people of color groups particularly Latinos and African Americans persons in and near Austin. This is further compounded by a lack of accountability and review by the police hierarchy and city overseers. Some of the *Statesman's* finding include:
- A Latino person is 25% more likely than an Anglo person to be involved in a use-of-force situation with Austin police and an African American person is 100% more likely to be involved in such an incident.<sup>6</sup>
- Approximately 30% of all use of force cases reported since 1998 occurred downtown. In about 41.1 of every 1,000 times individuals had contact with police downtown, police used force. Downtown officers used force against one of about every 29 Anglos involved in an incident. The percentage increases to one out of 23 for Latinos, and it increase further to one out of every 14 African Americans involved in an incident.<sup>7</sup>
- Police who use force face few questions from supervisors. In only one out of 6,447 use of force reports did a supervisor suggest that an officer failed to follow procedure. Only eight officers received additional training after filing reports.<sup>8</sup>
- Between 1998 and 2003, Austin police received 443 excessive force complaints from inside and outside the Police Department. Only 7% resulted in officer discipline, including just one firing, according to police records.<sup>9</sup>
- Police in Austin, a city with a population of about 665,000, filed 1,582 uses of force reports in 2002, about 2.4 for every 1,000 people. This figure is five times more than Cincinnati, which has a population of 331,000 and its own police problems. Cincinnati police filed 144 reports that year, or 0.4 for every 1,000 people.<sup>10</sup>

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<sup>6</sup> Erik Rodriguez, "Blacks Bear the Brunt When Police Use Force," *Austin American Statesman*, Jan.25, 2004, available at 2004 WL 57653668.

<sup>7</sup> *Id.*

<sup>8</sup> Erik Rodriguez, "The Escalation to Fatal Force," *supra* n. 1.

<sup>9</sup> Erik Rodriguez, "Policing Themselves," *Austin American Statesman* , Jan. 27, 2004, available at 2004 WL 57653759.

- Fourteen people died from 1998 to 2005 as a result of violent encounters with Austin police, all were Latino or African American but one. The death of the one Anglo person was ruled a “police-aided suicide” by the coroner.<sup>11</sup>

## 2. Findings by Steward Research Group

In February 2004, the Steward Research Group released a report titled “Racial Profiling: Texas Traffic Stops and Searches.” Several million police-civilian contacts, representing the majority of traffic stops in Texas, were analyzed. This data, collected from more than 400 law enforcement agencies in Texas, represents the largest set of racial profiling data ever done.<sup>12</sup> The report concluded that:

- Latinos are one and a half times more likely to be stopped in Austin than Anglos. African Americans in Austin are approximately twice as likely to be stopped as Anglos.<sup>13</sup>
- Both Latinos and African Americans are more than twice as likely to be searched as Anglos, following a traffic stop.<sup>14</sup>
- When “consent” searches are isolated, Latinos are more than twice as likely to be subjected to a search, while African Americans are more than five times more likely to be subjected to a search as Anglos.<sup>15</sup>
- If compared with collected data on contraband “hits” (when contraband was found during a search), Anglos actually were twice as likely to be found with contraband as either Latinos or African Americans.<sup>16</sup>

## 3. Findings by Roger Dunham and Geoffrey Alpert

Roger Dunham, a sociologist at the University of Miami, and Geoffrey Alpert, a criminologist at the University of South Carolina-Columbia, both respected academics, have created an analytical model for police responses and actions toward suspects charged with resisting police. Their analysis assigns a “force factor” score to incidents between police and suspects.

The Police Executive Research Forum (PERF) has published analyses created by Prof. Dunham and Prof. Alpert in studies of the police departments of Eugene/Springfield, Oregon and

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<sup>10</sup> Erik Rodriguez, “Blacks Bear the Brunt When Police Use Force,” *supra* n. 6.

<sup>11</sup> *Id.*

<sup>12</sup> Steward Research Group, *Racial Profiling*, Feb. 2004, at 4.

<sup>13</sup> *Id.* at 22

<sup>14</sup> *Id.* at 12

<sup>15</sup> “Consent” searches are an effective method of intimidation by APD against Hispanics and African Americans. Under Texas law, an officer can make an arrest for almost any fine-only offense. As such, “consent” searches are easily coerced, rather than risk being arrested.

<sup>16</sup> *Id.* at 35

Miami-Dade, Florida.<sup>17</sup> APD has requested that PERF also publish an evaluation of APD's training and use of force practices, in addition to the analysis done by Dunham and Alpert.

Dunham and Alpert's analysis of the Austin Police Department yielded surprising results. While there was little disparity in the use of force used against Anglos and people of color in cases where resisting police charges were eventually filed, there were significant differences in the amount of force used against Anglos versus that used against people of color when charges were not filed.

According to a story published in the *Austin American Statesman*, Latinos who were not charged with resisting police were 16% more likely to be met with force than recommended than Anglos, while African Americans were 21% more likely than Anglos to be met with excessive force in similar situations.<sup>18</sup>

#### 4. Findings of the Office of the Police Monitor

The Office of the Police Monitor (OPM) was created as a result of an agreement between the City of Austin and the Austin Police Association (APD's largest union) that a role and process for civilian oversight of APD was desirable and would enhance effective law enforcement in the community.<sup>19</sup>

One of the duties required of the Police Monitor is to publish a public report every six months, detailing statistics as to the operation of OPM.<sup>20</sup> Since its inception on February 11, 2002, OPM released a six month report in August 2002 and an Annual Report for 2002-2003. Therefore, according to its Standard Operating Procedures, OPM was nine months overdue on the six-month report for the second half of 2003. Moreover it was four months past the deadline for the second Annual Report. This delay sends a message to the people of color communities that are desperately attempting to mend fences with an unwilling partner.

Between June 2002 and August 2003, OPM made 52 recommendations to APD. APD has not responded to 21 of those recommendations, and has only accepted three. Thus 50% of OPM's recommendations fell upon deaf ears, while only 5% were implemented.<sup>21</sup> OPM was created to enhance police accountability to the community. Yet these figures do little to alleviate the concerns of the Latino and African American communities who feel targeted by APD. In fact, these statistics point to the bad faith of APD.

The statistics OPM has managed to put together indicate that almost 25% of the complaints received between February 2002-2003 were filed by Latinos who account for 30% of the population. African Americans filed 33% of the complaints received, despite the fact they make up only 10% of the population.<sup>22</sup> In its first year, OPM received 273 complaints containing 465 allegations. The most reported allegation was excessive use of force followed closely by unprofessional conduct. Harassment,

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<sup>17</sup> PERF is an organization dedicated to improving policing and advancing professionalism through research, public policy debate, provision of management services, executive development and training, and publishing.

<sup>18</sup> Andy Alford, "Resistance, Race Affect Police Response," *Austin American Statesman*, Mar. 28, 2004, available at 2004 WL 57656888.

<sup>19</sup> City of Austin, Office of Police Monitor, *Annual Report*, Feb. 2002-2003, at 7

<sup>20</sup> City of Austin, Office of Police Monitor, Standard Operating Procedures, Mar. 10, 2004, at 3

<sup>21</sup> City of Austin, Office of Police Monitor, Annual Report, 2002-2003, at 19, Office of Police Monitor, Six Month Report, Feb. 2003-Aug. 2003.

<sup>22</sup> *Id.* at 31

rudeness, and intimidation rounded out the most cited complaints.<sup>23</sup> Based on the available data, it seems highly unlikely that the new report of OPM would reflect the findings or conclusions of the Steward Research Group.

There was an outcry from the community when the OPM announced that the Citizen Review Panel would be seeking public comments regarding the Daniel Rocha shooting on Monday, October 31, Halloween night from 6 – 8 pm at Austin City Hall, 301 W. Second Street (the west side of Austin).<sup>24</sup> PODER was told that the Citizen Review Panel could not schedule its final public hearing until the Internal Affairs report was completed. Chief Knee announced in June 2005 that the Internal Affairs investigation would be completed sometime in August 2005. PODER was told that this public hearing needed to take place and be recorded so that the Citizen Review Panel could make its recommendations to Chief Knee. The OPM and the City were very much aware of timelines and deadlines associated with the investigation and should have been more diligent in allowing enough time to schedule a public comment hearing in a more timely manner. Numerous residents have expressed that the entire process was tainted by design in order to make it almost impossible to take any actions. Residents are even more upset and expressed their disappointments that Chief Stan Knee will have the last say in determining any disciplinary action in the case. Civil Service law, requires that disciplinary action against police officers be taken within 180 days of the action for which they are being disciplined. The question was asked to the OPM why they had waited so long to hold the public hearing when they knew that the 180 days limitation for taking discipline actions against any police officer was December 6, 2005. They had no real response. The public hearing should have been held in East Austin where numerous facilities with access to computers are available and would have made it more convenient for East Austin residents to attend and voice their questions and concerns. Again, the community feels they are being discriminated against by not having the public hearing earlier and not having it in the community.

## **B, Illustrative Cases**

### 1. Deaths Resulting from Incidents with Austin Police

Far too often, citizens' encounters with the Austin police have ended in death. The following tragic accounts are a nonexclusive list of deaths by Austin Police over the past several years:

- On June 9, 2005, Officer Julie Schroeder shot Daniel Rocha, an 18 year-old Mexican American youth, in the back at close range. Officer Schroeder had stopped the Chevy Suburban in which Rocha was a passenger as part of an anti-drug operation.
- On June 14, 2003, Officer Scott Glasgow attempted to arrest 20-year-old, African American Jesse Lee Owens for driving a vehicle with license plates listed as stolen. When Owens attempted to flee, Glasgow fired his gun at Owens five times and killed him. Glasgow was subsequently suspended by APD for 90 days for violating the Department's policies and procedures after an internal investigation. In January 2004, the District Attorney's office dismissed a grand jury indictment that had been filed against Glasgow. The District Attorney, sua sponte, dismissed the indictment for lack of sufficient evidence.<sup>25</sup>
- In June 11, 2002, Sophia King, a 23-year-old African American woman with a history of schizophrenia, was shot and killed by Officer John Coffey. Ms. King was chasing and

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<sup>23</sup> *Id.* at 36

<sup>24</sup> Mr. Ashton Cumberbatch, Jr., "Reschedule Daniel Rocha Public Hearing", letter, October 26, 2005

<sup>25</sup> Tony Plohetski, "Man Killed by Officer", *Austin American-Statesman*, June 15, 2003, available at 2003 WL56771320

threatening to stab a supervisor of the Housing Authority of the City of Austin after the supervisor and other Austin officers provoked a confrontation with Ms. King. The police and the supervisor knew she was mentally ill. Police left Ms. King's half-nude body in the courtyard of the housing project for more than four hours before removing it.<sup>26</sup>

- In March 2000, Steven Bernard Scott, a 40-year old African American man, died after taking a beating from a group of seven police officers. Police apprehended Mr. Scott after he fired shots into an empty, parked vehicle after a drug deal. Officers handcuffed Mr. Scott at his hands and feet before they beat him and allowed a police dog to attack him. The police report filed after the incident records that Mr. Scott pleaded for his life.<sup>27</sup>
- In March 1999, Herbert Vences, a non-English speaking Mexican national with mental impairments, died of gun-shot wounds to the chest and stomach after Officer Troy Brown shot him when Mr. Vences pointed a tree branch at the officer. Police were responding to reports that Mr. Vences was lunging at passing cars.<sup>28</sup>
- In February 1999, Johnny Cornell, an African American with a mental disability, was shot and killed by Officer Stan Farris. Mr. Cornell was holding a knife when Officer Farris shot him. It was disputed whether Mr. Cornell was facing Officer Farris or his mother when the officer shot him.<sup>29</sup>
- In January 1998, Rodney Wickware, a 31-year-old African American man, died of a crushed larynx and the resulting lack of oxygen to his brain after being beaten by police. The police stopped Mr. Wickware for allegedly suspicious behavior while he walked across a busy street to a fast food restaurant. The coroner and police contend that Mr. Wickware drank anti-freeze immediately before his encounter with police and that anti-freeze was the cause of his death. However, Mr. Wickware's surviving family and friends contend that he was neither suicidal nor prone to substance abuse.<sup>30</sup>

## 2. Jeffrey Thornton

Specific, recent incidents of police brutality in Austin are abundant. Jeffrey Thornton's story is representative of a clear pattern. Mr. Thornton is a 22-year-old, African American who lives in Austin. While leaving a downtown nightclub with a friend in the early morning hours on June 20, 2002, after celebrating Juneteenth, a Texas African American holiday, he witnessed an altercation between two individuals, whom he did not know. Mr. Thornton watched as APD Officer Michael Olsen use what he thought was excessive force against one of these individuals, and Mr. Thornton commented as such to his friend. Officer Olsen overheard Mr. Thornton and came over to ask if he knew either individual involved in the altercation. When Mr. Thornton said he did not, Officer Olsen, using profanity, told Mr. Thornton to get out of the street.

After Mr. Thornton and his friend had begun to walk away, Officer Olsen came up to Mr. Thornton from behind and grabbed his arm, telling him he was issuing him a ticket for being a

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<sup>26</sup> Claire Osborn, "Community Wants Answers in Fatal Police Shooting," *Austin American Statesman*, June 13, 2002, at B1

<sup>27</sup> Erik Rodriguez, "Blacks Bear the Brunt When Police Use Force," *supra* n. 6

<sup>28</sup> Claire Osborn, "Mexico Faults Austin Police in Man's Death," *Austin American Statesman*, Apr. 10, 1999, at B1

<sup>29</sup> Bob Banta, "Fatal Shooting Wasn't First One for Officer," *Austin American Statesman*, Feb. 4, 1999, at B1

<sup>30</sup> Bob Banta, "Poison Cited in Death of Man in Police Fight," *Austin American Statesman*, Feb. 3, 1998, at B2

pedestrian in a roadway. Even though Mr. Thornton accepted Officer Olsen's words without remonstrance, Officer Olsen bent Mr. Thornton's behind his back and twisted his wrists, effectively forcing him to walk bent over, and took him to a nearby police vehicle. When they reached the vehicle, Officer Olsen slammed Mr. Thornton into the hood of the car twice and then pushed him to the ground with such force that Mr. Thornton was rendered unconscious.<sup>31</sup> When he regained consciousness, still dizzy and bleeding from a head wound, Officer Olsen and another officer claimed Mr. Thornton was faking his injuries and slammed him to the ground again.

Mr. Thornton was released from jail at noon on June 20 and appeared before a judge at 6:00 p.m. that same day, at which time all charges against him were dropped. Officer Olsen was subsequently disciplined by APD on December 10, 2002, which temporarily suspended him for 60 days for excessive force, inappropriate language, and inaccurate statements in his police report, affidavits, and in his interviews with Internal Affairs.

During the internal investigation of Officer Olsen's actions, police officials used a surveillance camera from a nearby business. Although the police vehicle was equipped with a surveillance camera, the officers had turned it off during the incident with Mr. Thornton. The surveillance tape proved that Officer Olsen had made false statements in his use-of force report and probable cause affidavits. In July 2003, a grand jury indicted Olsen on three counts of tampering with a government record for his false statements. However, the District Attorney's office, sua sponte, dismissed the indictments in December 2003, citing lack of sufficient evidence to pursue a conviction.<sup>32</sup> The city of Austin recently settled a federal lawsuit filed over this incident.<sup>33</sup>

### 3. Fernando Rosales

On August 17, 2001, Austin police arrested Fernando Rosales after he attempted to flee the scene of an automobile accident in which he was involved. Police arrested Mr. Rosales for driving while intoxicated. Police handcuffed Mr. Rosales and bound his feet with plastic bands. While being transported between patrol cars and an EMS unit, Mr. Rosales head-butted several of the officers.<sup>34</sup> According to the Internal Affairs Division of APD, Officer Doroteo Hernandez kned Mr. Rosales in the face and upper body, punched him in the face, and hit his head with a flashlight.<sup>35</sup> Officer Hernandez then attempted to pull Mr. Rosales into the patrol car by his hair and chin. The report concluded that Officer Hernandez "used deadly force on the handcuffed and hobbled prisoner."<sup>36</sup>

During an investigation, the Internal Affairs Division determined that Officer Hernandez gave false statements to his superiors.<sup>37</sup> Another officer on the scene, Officer Danny Johnson, made lewd comments to Mr. Rosales after Mr. Rosales' shorts fell down. Officer Johnson then attempted to head-butt him<sup>38</sup>.

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<sup>31</sup> Erik Rodriguez, Blacks Bear the Brunt When The Police Use Force," supra n. 6.

<sup>32</sup> Id.

<sup>33</sup> ASK JIM.

<sup>34</sup> APD Internal Division, Investigative Summary- Doroteo #2947 Nov. 15. 2001, at 1 .

<sup>35</sup> Id. at 4.

<sup>36</sup> Id.at 7.

<sup>37</sup> Id. at 11 .

<sup>38</sup> APD Internal Affairs Division, *Investigative Summary*-Danny Johnson #3980, Nov, 16, 2001, at 2.

Internal Affairs recommended sustaining three allegations against Officer Hernandez (violations of Use of Deadly Force, Honesty, and Acts Bringing Discredit Upon the Department,<sup>39</sup> and Insubordination policies) and four allegations against Officer Johnson (violations of rules regarding Use of Less-Lethal force, Personal Conduct, Acts Bringing Discredit Upon the Department, and Insubordination policies).<sup>40</sup>

#### 4. Villegas Family

On October 17, 2003, Ricardo Villegas heard gunshots outside his home around 12:30 a.m. Also in this house were his father, brother, his wife, and his two small children. About twenty minutes later Mr. Villegas heard people, whom he thought to be police officers, yelling. Mr. Villegas does not understand English, but his brother translated to him that the officers were yelling for everyone in his home to come out. He walked out the front door, greeted by several officers pointing rifles at him.<sup>41</sup> The officers began yelling at him in English, but Mr. Villegas could not understand. His brother then walked out with Mr. Villegas' wife and father. All four were then forced to walk backwards with their hands up towards the officers. Mr. Villegas still had no knowledge of what was transpiring at this time.

The officers then asked if anyone else was in the house, and Mr. Villegas told them that his 5-year-old and 2-year-old were asleep. The officers yelled for them to come out, but the children stayed asleep. Three officers then proceeded, with rifles out, to enter the house. Mr. Villegas was afraid that if his children suddenly awoke they would be shot. The officers then began searching the entire house for a gun. Mr. Villegas said there was no gun in the house, and that he had heard the gunshots outside his window earlier. One officer said that someone reported shots, and APD came to check if the gun was in Mr. Villegas' house. Mr. Villegas' brother asked why they barged into their home, and Officer Vallejo, the only officer who gave his name, replied that this was routine procedure. The police left them without apologizing or explaining what gave them cause to enter the home.<sup>42</sup>

This abuse of police power could have cost Mr. Villegas' children their lives. In response Mr. Villegas filed a complaint and made an affidavit at the Austin Police Internal Affairs Office. Despite the events which occurred at his home, APD had no incident report of that night. Mr. Villegas will be filing a suit against APD in the near future.

#### 5. Ozomatli

During last year's South by Southwest Music Festival in Austin, police allegedly assaulted members of the band Ozomatli, an Afro-Latin band performing at the festival that is well-known for its progressive politics and demonstrations. The band and the crowd that attended its show on E. Sixth Street, in the heart of Austin's entertainment district, poured out into the street in a conga line at 2:25 a.m. The police became involved, because a noise ordinance prohibited loud music downtown after 2:00 a.m. An incident that began with the violation of a noise ordinance ended with police using pepper spray on the crowd. APD also assaulted and arrested two band members and the band's manager.<sup>43</sup> This recent story is but one of many where the police responded with excessive force to a

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<sup>39</sup> APD Internal Affairs Division, *Investigative Summary*-Doroteo Hernandez #2947 Nov. 15, 2001, at 7.

<sup>40</sup> APD Internal Affairs Division, *Investigative Summary*- Danny Johnson #3980, Nov, 16, 2001, at 5.

<sup>41</sup> *Affidavit of Ricardo Villegas*, Oct. 22, 2003, at 1.

<sup>42</sup> *Id.* at 2.

<sup>43</sup> Tony Plohetski, "SXSW Conga Line Ends in Jail," *Austin American Statesman*, Mar. 19, 2004, available at 2004 WL57656437

situation they could have easily controlled with less force. Moreover, APD's response tarnished the image of Austin during one of its most heralded national events.

### **C. Common Patterns of Misconduct**

The accounts and studies of the Austin police chronicled above reveal common patterns of misconduct endemic to APD. These occurrences inordinately affect Latinos and African Americans. Most troubling of all, City and APD administration has been unwilling to take appropriate remedial actions to discipline offending officers. The City and APD have also failed to implement preventive measures such as increased officer training, tamper-proof and effective monitoring equipment in police vehicles, and appropriate police policies regarding consent searches, deadly force policy, or officer deployment. These common patterns of misconduct are endangering the lives of Austin's people of color residents at the hands of an agency whose job is to protect them. The atmosphere created by the actions of Austin police is one of distrust within the communities of color. The police force has succeeded in enlarging a racial divide that was already deep, and the City and APD are unwilling to be a partner in bridging this gap.

The City of Austin, despite the constant outcry against the police brutality waged against people of color, maintains a passive stance while the excessive force, abuse, and discrimination against Latinos and African Americans continue. There appears to be no event or report or tragedy that will convince the City of Austin to take corrective action against the racial prejudice in APD. Even after the largest racial profiling study ever done, the City has done little to curb the abuse of "consent" searches that are clearly a systematic practice in and around Austin.

### III. CONCLUSION AND REQUEST FOR RELIEF

These statistics and personal accounts clearly highlight and emphasize a **systematic pattern and practice of unlawful and discriminatory police misconduct by the City of Austin's Police Department, which is a recipient of federal monies, in violation of federal law**. PODER, (People Organized in Defense of Earth and her Resources) in Austin, Texas request that the Department of Justice undertake an investigation into these practices, pursuant to its authority under Section 14141, Title VI of the Civil Rights Act of 1964, and the Safe Streets Act. **Specifically, the undersigned request that the Department withhold federal funding from the City of Austin's Police Department until a written binding agreement is in place that the Austin Police Department has:**

1. Amended its deadly force policy from shoot to kill to shoot to disable.
2. Included training on the use of non-lethal weapons such as Taser guns and bean bag shotguns in annual and periodic officer training.
3. Retrained all its officers in proper use of force.
4. Included training on officers interacting appropriately with people of color with disabilities, including, but not limited to, use of force in annual and periodic officer training.
5. Abolished "consent" searches.
6. Ensured that proper equipment, training, and policies are in place to guard against police misconduct, including, but not limited to, a video camera placed in every police vehicle able to record images with wide camera angles, and audio recording devices in operation during all activity, not subject to arbitrary control by the patrolling officer.
7. Implemented the mandate of pairing of proven (i.e. no history of excessive force, discrimination) veterans with rookies on the East side.
8. Retrained officers to have respect for, and work with, Austin's communities of color.
9. Made statistics available on the ethnicity of civilian, and officer publicly available, including, but not limited to publication on APD's website, all encounters involving use of force.
10. Maintained records of implementation of above steps for next 10 years.

PODER urges your prompt attention to remedying the effects of discriminatory practices of the City of Austin and the City's Police Department. We have included various letters, affidavits and articles for your review (see Appendix). Finally on behalf of PODER, thank you for your assistance. We look forward to your prompt response.

Respectfully submitted,

Susana Almanza  
Co-Director  
PODER

Erika Gonzalez  
Co-Director  
PODER

Max Rangel  
Research Analyst/Organizer  
PODER

Xc: PODER Board , Austin City Council, Chief Stan Knee, LULAC, ACLU, NAACP, Senator Gonzalo Barrientos, State Representative Eddie Rodríguez, Attorney Bobby Taylor, Attorney James Harrington-Texas Civil Rights Project, Juan Sanchez-Southwest Keys Richard Moore-Southwest Network for Environmental & Economic Justice, Luke Cole-Center on Race, Poverty & the Environment,